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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

Chief Information Officer, Office of the[129]

Replace Analysis
Insert Reserved Chapters 7 to 19 and Chapters 20 and 21

Ombudsman[141]

Replace Analysis
Replace Chapters 1 to 4
Remove Chapters 5 and 6

State Public Defender[493]

Replace Chapter 12

Lottery Authority, Iowa[531]

Replace Analysis
Replace Chapter 12
Replace Chapters 18 to 20

Professional Licensure Division[645]

Replace Chapter 131
Replace Chapter 133

Revenue Department[701]

Replace Chapter 80

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

[Created by 2013 Iowa Acts, chapter 129]

TITLE I
GENERAL OFFICE PROCEDURES

CHAPTER 1
OFFICE ORGANIZATION

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

CHAPTER 3
PETITIONS FOR RULE MAKING

CHAPTER 4
DECLARATORY ORDERS

CHAPTERS 7 to 19
Reserved

TITLE II
BROADBAND

CHAPTER 20
BROADBAND INFRASTRUCTURE—TARGETED SERVICE AREAS

CHAPTER 21
BROADBAND INFRASTRUCTURE—PROJECT CERTIFICATION

CHAPTERS 7 to 19
Reserved

TITLE II
BROADBAND

CHAPTER 20
BROADBAND INFRASTRUCTURE—TARGETED SERVICE AREAS

129—20.1(8B,427) Definitions. For purposes of this chapter, the following definitions shall govern.

"Broadband" means a high-speed, high-capacity electronic transmission medium, including fixed wireless and mobile wireless mediums, that can carry data signals from independent network sources by establishing different bandwidth channels and that is commonly used to deliver Internet services to the public.

"Broadband infrastructure" means the physical infrastructure used for the transmission of data that provides broadband services. "Broadband infrastructure" does not include land, buildings, structures, improvements, or equipment not directly used in the transmission of data via broadband.

"Census block" means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block.

"Chief information officer" or *"CIO"* means the state chief information officer or the state chief information officer's designee.

"Communications service provider" means a service provider that provides broadband service.

"Crop operation" means a commercial enterprise where a crop is maintained on the property of the commercial enterprise.

"Date of commencement" means the date first occurring after July 1, 2015, and before July 1, 2020, in which broadband infrastructure used in a certified project becomes property taxed as real property as determined by Iowa Code section 427A.1.

"Date of completion" or *"completed"* means the date that a communications service provider offers or facilitates broadband service delivered at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area.

"Installation of the broadband infrastructure" means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. "Installation of the broadband infrastructure" does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

"Is being performed" includes but is not limited to the planning, preparation, design, architecture, labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services.

"Office" means the office of the chief information officer authorized by Iowa Code chapter 8B.

"Targeted service area" means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block, within which no communications service provider offers or facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of July 1, 2015.

[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

129—20.2(8B,427) Scope. This chapter applies to the office's determinations of whether a census block is a targeted service area and to persons who wish to challenge the office's finding on whether a census block is a targeted service area.

[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

129—20.3(8B,427) Broadband availability maps and data sources. To determine whether a communications service provider offers or facilitates broadband service in a particular census block at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of July 1, 2015, the office utilized broadband availability maps and corresponding data sources made available by Connect Iowa, LLC, a subsidiary of Connected Nation, Inc. Such maps and data sources were widely accepted for accuracy and made available for public review and comment. By selecting these maps and data sources, the office has satisfied its obligation to reference broadband availability

maps or data sources that are widely accepted for accuracy and available for public review and comment as required by Iowa Code section 8B.10(1).
[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

129—20.4(8B,427) Targeted service area determination. The office will create a statewide map divided into census blocks. Based on the maps and data sources referenced in rule 129—20.3(8B,427), the statewide map will designate census blocks within which, as of July 1, 2015, no communications service provider offered or facilitated broadband service to the public at or above 25 megabits per second of download speed and 3 megabits per second of upload speed. This statewide map shall be available online at http://ocio.iowa.gov/. As of November 30, 2016, targeted service area designations as shown on the statewide map shall be considered the office's final determination and finding of whether a particular census block constitutes a targeted service area, unless a person or party successfully challenges the office's determination pursuant to the appeals and contested case process outlined in this chapter, in which case the office will update the statewide map to reflect the outcome of such challenge(s). For the sake of clarity, failure to challenge the office's determination and finding of whether a particular census block constitutes a targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall render the office's determination and finding with respect to that particular census block final and no longer subject to challenge. A party's failure to challenge the office's determination and finding of whether a particular census block constitutes a targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall be deemed a failure to exhaust administrative remedies.
[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

129—20.5(8B,427) Appeals.

20.5(1) *Notice of appeal.* Within 20 days after the office makes its final determination of whether a particular census block constitutes a targeted service area pursuant to rule 129—20.4(8B,427), any person or party aggrieved or adversely affected by such determination may challenge the office's finding by filing a notice of appeal with the office.

a. The notice of appeal shall set forth:

(1) The name, address, telephone number, and e-mail address of the person or party;

(2) The particular census block designation the person or party is challenging by stating:

1. The census block number as provided on the statewide map referenced in rule 129—20.4(8B,427);

2. The county in which the census block is located as provided on the statewide map referenced in rule 129—20.4(8B,427);

(3) The manner in which the person or party is aggrieved or adversely affected by the office's determination; and

(4) The grounds upon which the appeal is based.

b. Accompanying the notice of appeal, the person or party shall provide the office with all evidence and information necessary to support the appeal.

20.5(2) *Filing.* Except to the extent that electronic filing is not feasible, a notice of appeal and all corresponding evidence and information shall be filed by electronic mail (e-mail) at cio@iowa.gov. To the extent electronic filing is not feasible, the notice of appeal and all corresponding evidence and information shall be mailed to: Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. If the notice of appeal and corresponding evidence and information are filed by mail, such filing shall be accompanied by a written explanation of why electronic filing was not feasible.

20.5(3) *Notification of and input from affected persons or parties.* Within 10 calendar days of receipt of a notice of appeal, the office shall provide notification to any affected persons or parties by posting the notice of appeal at http://ocio.iowa.gov/. From the date of such posting, any affected persons or parties will have 20 calendar days to submit evidence and information in support of, or in opposition to, such appeal. Except to the extent not feasible, any such evidence and information shall be submitted by electronic mail (e-mail) to cio@iowa.gov. To the extent electronic submission is not feasible, such

evidence and information shall be mailed to: Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. If such evidence or information is submitted by mail, the evidence or information shall be accompanied by a written explanation of why electronic submission was not feasible.

20.5(4) *Internal review.* At the end of the time periods specified in subrules 20.5(1) and 20.5(3), the office shall consolidate all appeals involving the same census block and conduct an internal review of the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources originally utilized in rule 129—20.4(8B,427), and any other information deemed relevant by the office.

20.5(5) *Final agency decision.* Following the internal review set forth in subrule 20.5(4), the office will issue a final agency decision stating the reasons for the office's decision concerning the census block in question. In issuing the decision, the office shall consider the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources originally utilized in rule 129—20.4(8B,427), and any other information deemed relevant by the office. The final agency decision will be posted online at http://ocio.iowa.gov/. The final agency decision shall become final unless within 30 days of such posting an appellant or an affected person or party that submitted evidence in support of, or in opposition to, the appeal files a request for a contested case proceeding pursuant to rule 129—20.6(8B,427).

20.5(6) *Time of filing.* In determining the date on which an appeal or request for a contested case proceeding is filed with the office, the following shall apply: an appeal or request for a contested case proceeding delivered by mail shall be deemed to be filed on the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed on the date of receipt.

20.5(7) *Public records.* The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Persons are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting evidence or information to the office as part of the appeals and contested case process outlined in this chapter. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all evidence and information submitted by persons or parties as public, nonconfidential records unless a person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

a. A person or party requesting confidential treatment of evidence or information submitted must:

(1) Fully complete and submit to the office Form 22 (available online at http://ocio.iowa.gov/);

(2) Identify the request in the notice of appeal or, if evidence or information is submitted pursuant to subrule 20.5(3), identify the request in the transmittal e-mail or the written explanation of why electronic filing was not feasible;

(3) Conspicuously mark the outside of any submission as containing confidential evidence or information;

(4) Mark each page upon which confidential evidence or information appears; and

(5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential evidence and information must be excised in such a way as to allow the public to determine the general nature of the evidence and information removed and to retain as much of the otherwise public evidence and information as possible.

b. Form 22 will not be considered fully complete unless, for each confidentiality request, the person or party:

(1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific evidence or information as confidential;

(2) Justifies why the specific evidence or information should be maintained in confidence;

(3) Explains why disclosure of the specific evidence or information would not be in the best interest of the public; and

(4) Sets forth the name, address, telephone number, and e-mail address of the individual authorized by the person or party submitting such evidence and information to respond to inquiries from the office concerning the confidential status of such evidence and information.

c. Failure to request that evidence or information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Persons may not request confidential treatment with respect to a notice of appeal or other similar documents. Blanket requests to maintain all evidence and information submitted as confidential will be categorically rejected.

[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

129—20.6(8B,427) Contested cases. A contested case initiated pursuant to this chapter shall be a contested case proceeding and shall be conducted in accordance with the provisions of the office's rules governing contested case proceedings (129—Chapter 6) unless the provisions of this rule provide otherwise. The definitions in rule 129—6.2(8B,17A) shall also apply to this rule.

20.6(1) *Notice of hearing.* Upon receipt of a request for a contested case proceeding, the office shall inform the department of inspections and appeals of the filing and of relevant information pertaining to the appeal in question. The department of inspections and appeals shall send a written notice of the date, time and location of the hearing to all affected persons or parties who initiated a contested case related to the census block forming the basis of the contested case, or appealed the office's determination of the census block forming the basis of the contested case pursuant to subrule 20.5(1), or submitted evidence or information to the office pursuant to subrule 20.5(3) directly related to the census block forming the basis of the contested case. The presiding officer shall hold a hearing on the matter within 60 days of the date the notice of appeal was received by the office.

20.6(2) *Consolidation.* In the event any contested cases concerning the same census block are initiated separately, such matters shall be consolidated.

20.6(3) *Discovery.* The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

20.6(4) *Witnesses and exhibits.* The parties shall contact each other regarding witnesses and exhibits at least 10 days prior to the date set for the hearing. In order to avoid duplication or the submission of extraneous materials, the parties must meet, either in person, by telephone, or by electronic means, prior to the hearing regarding the evidence to be presented.

20.6(5) *Telephone hearing.* If the hearing is conducted by telephone or other electronic means, the parties must deliver all exhibits to the office of the presiding officer at least 3 days prior to the time the hearing is conducted. Telephone hearings shall be strongly encouraged.

[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

These rules are intended to implement Iowa Code sections 8B.1, 8B.10, 17A.3, and 427.1(40).

[Filed ARC 2782C (Notice ARC 2699C, IAB 8/31/16), IAB 10/26/16, effective 11/30/16]

CHAPTER 21
BROADBAND INFRASTRUCTURE—PROJECT CERTIFICATION

129—21.1(8B,427) Definitions. The definitions in rule 129—20.1(8B,427) shall apply to this chapter.
[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

129—21.2(8B,427) Scope. This chapter applies to communications service providers who request certification pursuant to Iowa Code section 427.1(40) from the office that an installation of the broadband infrastructure is being performed or was completed in a targeted service area, and that the broadband infrastructure installed facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed.
[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

129—21.3(8B,427) Application for certification. Applications for certification shall be completed and submitted online at http://ocio.iowa.gov/. In order to receive certification from the office, applications must be filled out in their entirety. Communications service providers making application to the office will be required to certify that all of the information contained in the application is accurate. If it is later determined that any of the information contained in the application is inaccurate, the office may revoke the certification, in whole or in part. An application for certification shall include without limitation the following information:

1. The communications service provider's legal and business name and address and the name, address, telephone number, and e-mail address of the person authorized by the communications service provider to respond to inquiries regarding the application for certification;
2. The census block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application (i.e., the targeted service area in which the installation of the broadband infrastructure is being performed or was completed);
3. Attestation that the broadband infrastructure installed in the targeted service area(s) facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed; and
4. Any other information as requested in the application.

[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

129—21.4(8B,427) Time of filing. Except as otherwise authorized by the office, an application for certification shall be deemed filed on the date of its online submission pursuant to rule 129—21.3(8B,427). Notwithstanding the foregoing, except as otherwise authorized by the office, an application for certification will not be deemed filed prior to the expiration of the initial 20-day appeal period specified in 129—subrule 20.5(1).
[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

129—21.5(8B,427) Notice of decision and issuance of certificate. The office shall notify the communications service provider by electronic means of its decision regarding an application for certification within 30 days of the filing of an application and, if appropriate, shall issue a certification by electronic means within that same time frame. If the decision is to deny the application or part of the application, such notice shall include a concise statement of the office's reasons for such denial, in whole or in part. A determination by the office to deny an application for certification, in whole or in part, may be appealed pursuant to 129—Chapter 6.
[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

129—21.6(8B,427) Contents of certification. The certification shall state the communications service provider for which the certification is being issued, the census block number(s) (as provided on the map referenced in rule 129—21.4(8B,427)) of the targeted service area(s) for which the certification is being issued and county(s) in which such targeted service area(s) resides, that the office has determined the census block(s) in which the installation is being performed or was completed are targeted service

area(s), that the broadband infrastructure installed facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed, and the date on which the certification is issued by the office. Such certification shall be signed by the CIO.
[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

129—21.7(8B,427) Targeted service areas subject to challenge. To the extent an application for certification satisfies all other requirements of this chapter, if at the time such application is filed the office's determination of whether a particular census block forming the basis of such application, in whole or in part, is a targeted service area currently subject to challenge pursuant to the appeal and contested case procedures set forth in 129—Chapter 20, or the judicial review and appeal procedures outlined in Iowa Code sections 17A.19 and 17A.20, the office will issue a certification. Notwithstanding the foregoing, the aspect(s) of the office's certification concerning census blocks forming the basis of the application for certification that is currently subject to such challenge shall be purely contingent and valid only to the extent the office's original determination is ultimately upheld at the end of the entire appeals process once final, including judicial review and any subsequent appeal. For purely administrative purposes, if a portion of an application for certification is later deemed invalid by operation of this rule, the office may require the communications service provider to file a new application pursuant to rule 129—21.3(8B,427).
[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

129—21.8(8B,427) Certification of completion and field testing. To the extent applicable, after an installation of broadband infrastructure certified by the office is fully installed in a targeted service area, the communications service provider for which a certification was issued must certify to the office that such installation facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed. The office may, in its discretion, conduct field tests for compliance with the requirements of Iowa Code section 427.1(40)*"b"* at any time after broadband service is available in a targeted service area. Such field tests may include but not be limited to speed tests from any location in a targeted service area in which the project was deployed or, in the case of wireline installations, the communications service provider's network operation center or central office. As applicable, noncompliance may be reported to the attorney general, the department of revenue, or applicable county board of supervisors.
[**ARC 2782C**, IAB 10/26/16, effective 11/30/16]

These rules are intended to implement Iowa Code sections 8B.1, 8B.3, 8B.4(15), 17A.3, and 427.1(40).

[Filed ARC 2782C (Notice ARC 2699C, IAB 8/31/16), IAB 10/26/16, effective 11/30/16]

OMBUDSMAN[141]

[Prior to 3/30/94, see Citizens' Aide[210]]
[Rules published 3/30/94 exempt from Iowa Code chapter 17A pursuant to Iowa Code section 2C.9(5). These rules were also published in the 3/30/94 IAB as authorized by the ARRC pursuant to Iowa Code section 17A.6(1)*"c."*]
[Prior to 10/26/16, see Citizens' Aide/Ombudsman[141]; renamed Ombudsman by 2013 Iowa Acts, House File 185, section 3.]

CHAPTER 1
ORGANIZATION

CHAPTER 2
PROCEDURES

CHAPTER 3
INFORMATION PRACTICES

CHAPTER 4
RULE MAKING

CHAPTER 1
ORGANIZATION

[Prior to 3/30/94, see 210—Chapter 1]

141—1.1(2C) Authority and function. The office of ombudsman was established by the general assembly in 1972 and is charged with the responsibility to investigate complaints from any persons regarding administrative actions of Iowa state or local governmental agencies and to render objective opinions or recommendations on the complaints, in the interests of resolving complaints and improving administrative processes and procedures. In addition to the powers and duties specified in Iowa Code chapter 2C, the office of ombudsman shall investigate complaints received pursuant to Iowa Code section 23A.4 and serve on the child support advisory committee pursuant to Iowa Code section 217.3A(3).

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—1.2(2C) Location and access. The office of ombudsman is located at the Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. The office Web site is www.legis.iowa.gov/Ombudsman. The office can be reached at the following numbers: telephone (515)281-3592, 1-888-426-6283 (1-888-IA-OMBUD), and TDD/TTY (515)242-5065, and fax (515)242-6007. The office can also be reached by electronic mail at ombudsman@legis.iowa.gov. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except designated state holidays.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—1.3(2C) Composition and duties of staff.

1.3(1) *Staff.* The office of ombudsman is composed of the following staff positions:

a. Ombudsman. The ombudsman is appointed by the legislative council pursuant to Iowa Code section 2C.3. The ombudsman shall meet the qualifications specified in Iowa Code section 2C.4 and serve for the term of office provided in Iowa Code section 2C.5. The ombudsman employs and supervises all staff in the positions and at the salaries authorized by the legislative council.

b. Deputy ombudsman. The ombudsman shall designate one of the members of the staff as the deputy ombudsman. The deputy ombudsman shall act as the ombudsman when the ombudsman is absent from the state or becomes disabled, or when the position of ombudsman is vacant, until the vacancy is filled by the legislative council.

c. Legal counsel. The legal counsel shall provide legal advice, assistance, and representation to the ombudsman and members of the staff in matters pertaining to their authority and duties and shall perform other assigned duties.

d. Assistant for corrections. The assistant ombudsman for corrections is primarily responsible for investigating complaints relating to penal and correctional agencies, and performs other assigned duties.

e. Assistants. The assistant ombudsmen receive and investigate complaints and perform other assigned duties.

f. Support staff. The support staff performs secretarial, clerical, and other assigned duties.

1.3(2) *Delegation of authority or duties.* The ombudsman may delegate to any staff member any authority or duties of the ombudsman, except the duty of making formal recommendations to agencies or reports to the governor or the general assembly.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

These rules are intended to implement Iowa Code sections 2C.3(2), 2C.6, 2C.9(6), 23A.4, and 217.3A(3).

[Filed 12/15/75, Notice 10/20/75—published 12/29/75, effective 2/2/76]
[Filed 8/26/81, Notice 7/22/81—published 9/16/81, effective 10/21/81]
[Filed 8/1/84, Notice 6/20/84—published 8/29/84, effective 10/3/84]
[Adopted and published 3/30/94 pursuant to Iowa Code section 2C.9(5), effective 5/1/94]
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

CHAPTER 2
PROCEDURES

[Prior to 3/30/94, see 210—Chapter 2, rules 6.1(601G) and 7.1(601G)]

141—2.1(2C) Definitions. As used in this chapter:

"Administrative action" means any action, decision, omission, policy, practice, procedure, or rule of an agency or any failure of an agency to act pursuant to law.

"Agency" means all governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of official duties. "Agency" includes any person providing child welfare or juvenile justice services under contract with an agency that is subject to investigation by the ombudsman. "Agency" does not include:

1. Any court or judge or appurtenant judicial staff;
2. The members, committees, or permanent or temporary staffs of the Iowa general assembly;
3. The governor of Iowa or the governor's personal staff;
4. Any instrumentality formed pursuant to an interstate compact and answerable to more than one state; and
5. Any agency, official or employee of the federal government.

"Employee" means any employee of any agency.

"Officer" means any officer of any agency.

"Person" means an individual, aggregate of individuals, corporation, partnership, or unincorporated association.

"Records" or *"documents"* means any writings, drawings, graphs, charts, photographs, phonorecords, audio recordings, video recordings, and any other data or information stored or preserved in any medium.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.2(2C) Complaints.

2.2(1) *Persons who may contact office.* Any person may contact the ombudsman concerning an administrative action by an agency. If a person contacts the ombudsman on behalf of another person whose specific right or interest is directly affected by an administrative action, the ombudsman may request that the affected person contact the ombudsman as the complainant or obtain the consent of the affected person before considering the complaint.

2.2(2) *Methods of contact.* The ombudsman may be contacted at the office of ombudsman or at the site of an agency or other location specified by the ombudsman. No appointment is needed for the initial office visit. Contact may be made by mail, e-mail, telephone, facsimile (fax), office visit, or any other method deemed acceptable by the ombudsman, except as provided in subrule 2.2(3). Contact may also be made indirectly by the receipt of a person's correspondence which is referred or forwarded to the office of the ombudsman.

2.2(3) *Written complaints.* The ombudsman may require complaints to be submitted in writing or on a form prescribed by the ombudsman.

2.2(4) *Assistance by the ombudsman.* If a person is incapable of submitting a written complaint or has difficulty communicating with the ombudsman because of a disability or language barrier, the ombudsman shall assist that person in completing the complaint or make accommodations to facilitate communication with that person.

2.2(5) *Self-initiated complaints.* An investigation into an agency's administrative action may be initiated on the ombudsman's own motion, if the ombudsman determines it is an appropriate subject for investigation.

2.2(6) *Anonymous complaints.* The ombudsman may accept a complaint from an anonymous person. However, if the ombudsman at any time determines the complainant's identity is needed to pursue an investigation of the complaint, the ombudsman may request that the complainant's identity be disclosed. If the identity of the complainant is not disclosed as requested, the ombudsman may decline to pursue investigation of the complaint.

2.2(7) *Information requests.* If a person who contacts the ombudsman requests information, the ombudsman may provide such information, if it relates to state and local government, or refer the person to another agency or to any other appropriate entity or source for the information.

2.2(8) *No fee or charge.* The ombudsman shall not assess any monetary or other charge against any person who contacts the office of ombudsman for assistance.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.3(2C) Institutional communications.

2.3(1) *Correspondence.* Any correspondence from a person confined or residing in an institution or facility under the control of an agency shall be forwarded, unopened and without undue delay, to the office of ombudsman by the institution or facility. Any correspondence from the office of ombudsman to such a person shall be delivered, unopened and without undue delay, by the institution or facility to that person.

2.3(2) *Telephonic communication.* A telephonic communication between a person confined or residing in an institution or facility under an agency's control and any staff member of the office of ombudsman shall not be monitored by any officer or employee of that agency.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.4(2C,70A) Whistleblower reprisal complaints.

2.4(1) *State employees.* Notwithstanding the limitations of subrule 2.6(1), the ombudsman may investigate a complaint filed by an employee of a state employment system who alleges that an adverse employment action has been taken against the employee as provided in Iowa Code section 70A.28(2). This provision does not apply to employees of those entities excluded from the definition of "agency" under Iowa Code section 2C.1(2). This provision applies only to employees who are non-merit employees and employees not covered by a collective bargaining agreement. Complaints must be made to the ombudsman within 30 calendar days following the effective date of the adverse employment action.

2.4(2) *Investigation.* If an investigation of the employee's complaint occurs, the ombudsman shall issue findings in an expeditious manner.

2.4(3) *Investigative findings.* If the employee files an appeal of the adverse employment action with the public employment relations board pursuant to Iowa Code section 70A.28(6), the written findings issued by the ombudsman may be introduced as evidence before the public employment relations board.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.5(2C) Preliminary review and inquiry.

2.5(1) *Review of complaint.* The ombudsman shall review and consider each complaint to determine if it is within the ombudsman's jurisdiction, if it is an appropriate subject for investigation, and if it warrants an investigation, under the criteria in rule 141—2.6(2C).

2.5(2) *Preliminary inquiry.* The ombudsman may make a preliminary inquiry to obtain information for the purpose of making the determination required in subrule 2.5(1). A preliminary inquiry may utilize any of the methods available for investigations under subrule 2.9(1). However, a preliminary inquiry shall not be considered an investigation.

2.5(3) *Resolution without investigation.* If, in the course of a preliminary inquiry on the complaint, an agency provides an explanation or response or takes an action which resolves the complaint, the ombudsman may decline to investigate the complaint. The ombudsman shall inform the complainant regarding the resolution of the complaint. However, the resolution of a complaint during a preliminary review and inquiry does not preclude the ombudsman from conducting an investigation into the complaint.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.6(2C) Criteria for investigation.

2.6(1) *Jurisdiction.* The ombudsman has jurisdiction to investigate any administrative action of an agency; however, the ombudsman shall not investigate the complaint of an employee of an agency

in regard to that employee's employment relationship with the agency, except as provided in rule 141—2.4(2C,70A).

2.6(2) *Subjects for investigation.*

a. An appropriate subject for investigation includes any administrative action which the ombudsman has reason to believe might be:

(1) Contrary to law or regulation;

(2) Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though it is in accordance with the law;

(3) Based on a mistake of law;

(4) Arbitrary in ascertainments of fact;

(5) Based on improper motivation or irrelevant consideration; or

(6) Unaccompanied by an adequate statement of reasons.

b. The ombudsman may also inquire into an agency's policy, practice or procedure if the ombudsman has reason to believe improvements can be made to the policy, practice or procedure which lessen the risk that objectionable administrative actions will occur.

2.6(3) *Reasons to decline investigation.* The ombudsman may decline to investigate a complaint if the ombudsman finds substantiating facts that:

a. The complainant has available another remedy or channel of complaint which the complainant could reasonably be expected to use;

b. The complaint pertains to a matter outside the ombudsman's power;

c. The complainant has no substantive or procedural interest which is directly affected by the matter complained about;

d. The complaint is trivial, frivolous, or vexatious or not made in good faith;

e. Other complaints are more worthy of attention;

f. The resources of the ombudsman are insufficient for adequate investigation;

g. The complaint has been delayed too long to justify present examination of its merit;

h. The complainant does not provide or refuses to provide, without good reason, information in the complainant's possession or knowledge which is requested by the ombudsman;

i. A previous determination has been made by the ombudsman regarding the subject matter of the complaint; or

j. The complaint has been resolved due to a change in the complainant's circumstances or in the law, or due to an action taken by the agency during a preliminary review and inquiry on the complaint.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.7(2C) Decision not to investigate.

2.7(1) *Notice of decision.* If, after preliminary review and consideration of a complaint, the ombudsman decides not to investigate the complaint, the complainant shall be informed of the decision and the reasons for the decision. The ombudsman may also inform the agency involved of the decision, if such notice is deemed appropriate.

2.7(2) *Referral of nonjurisdictional complaint.* If the ombudsman does not have jurisdictional authority to investigate a complaint, the complainant may be referred to an agency or other appropriate entity or person for assistance.

2.7(3) *Effect of declining investigation.* A decision to decline investigation of a complaint under subrule 2.6(3) does not preclude the ombudsman from inquiring into the complaint or a related subject matter in the future.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.8(2C) Decision to investigate.

2.8(1) *Notice of decision.* If, after preliminary review and inquiry and consideration, the ombudsman decides to investigate a complaint, the complainant and the agency involved in the complaint shall be notified of the decision.

2.8(2) *Notice to agency.* A notice of investigation to an agency shall be directed to an official or employee of the agency. Such notice may be given simultaneously or in conjunction with any investigative action that is initiated under rule 141—2.9(2C).
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.9(2C) Investigations.

2.9(1) *Methods.* The ombudsman may use any one or more of the following methods in conducting an investigation:

a. Review applicable laws, rules, regulations, and policies;

b. Request a statement from an agency providing reasons for taking an administrative action;

c. Make informal verbal or written inquiries to an agency and other persons for assistance or information;

d. Take testimony from any person as provided under rule 141—2.11(2C).

e. Examine and copy records or documents of an agency;

f. Enter and inspect without advance notice any premises within an agency's control;

g. Attend administrative hearings or proceedings;

h. Issue a subpoena to compel a person to provide sworn testimony or to produce relevant records or documents;

i. Hold private hearings;

j. Convene a public hearing as a forum to obtain public input or comment on a subject of general or broad public concern;

k. Any other method determined appropriate by the ombudsman.

2.9(2) *Ex parte communications.* A communication or receipt of information by the ombudsman or any person in the course of an investigation shall not be considered an ex parte communication as described in Iowa Code section 17A.17.

2.9(3) *Status reports.* The ombudsman shall report the status of an investigation to the complainant upon request of the complainant or whenever it is deemed appropriate.
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.10(2C) Subpoenas.

2.10(1) *Issuance.* Pursuant to Iowa Code subsection 2C.9(5), the ombudsman has power to issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry.

2.10(2) *Notice.* The ombudsman shall give reasonable notice of the date, time, place, and purpose for the taking of testimony or the production of documentary or other evidence. Notice shall be served in accordance with the law applicable to the service of subpoenas in civil actions.

2.10(3) *Fees.* A person required to give testimony or produce documentary or other evidence is entitled to payment of the same fees and travel allowances as are payable to a witness whose attendance has been required in a district court of this state.

2.10(4) *Enforcement.* If a person fails or refuses to obey a subpoena, the ombudsman may file a petition with the district court having jurisdiction for an order directing obedience to the subpoena under Iowa Code subsection 2C.9(5).
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.11(2C) The taking of testimony.

2.11(1) *Purpose.* The taking of testimony is an internal device used by the ombudsman to gather information and to assist in arriving at conclusions or recommendations regarding an agency's actions.

2.11(2) *Witnesses.* Any person may be called to give testimony relating to a matter before the ombudsman.

2.11(3) *Notice.* The ombudsman shall provide to the person whose testimony is sought reasonable notice of the date, time, and place for taking that person's testimony. If the ombudsman issues a subpoena compelling a person to give testimony, notice shall be provided in the subpoena.

2.11(4) *Location.* The ombudsman has discretion to take testimony from a person at the ombudsman's office or at another location deemed appropriate by the ombudsman, or by telephone or other electronic means.

2.11(5) *Rights of witnesses.* A person who gives testimony is accorded the same privileges and immunities as are extended to witnesses in the courts of this state. The witness is entitled to be accompanied and advised by counsel or other representative while being questioned, but only counsel may speak or raise objections to questions on behalf of the witness. Objections to questions shall be noted, but the witness shall answer all questions, except when a privilege or immunity accorded to the witness has been asserted.

2.11(6) *Conduct of testimony.* The ombudsman may administer oaths to persons giving testimony before the ombudsman. The ombudsman determines the order for the taking of testimony and may sequester witnesses or examine a witness privately. Questions will be posed by the ombudsman. At the conclusion of the ombudsman's examination of a witness, counsel for the witness may be permitted to question the witness, after which the ombudsman may inquire further into any matters raised during the examination. The scope of the questions shall be decided and may be limited by the ombudsman.

2.11(7) *Evidence.* Strict rules of evidence shall not apply. The probative nature of any evidentiary matter shall be determined by the ombudsman.

2.11(8) *Record.* The ombudsman may record the testimony by audio or video recording or by use of a certified court reporter. A copy of the witness's testimony record may be provided to the witness upon request at the conclusion of the investigation.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.12(2C) Disposition after investigation.

2.12(1) *Complaint unsubstantiated.* If, after completing an investigation, the ombudsman determines the complaint is not substantiated based upon a preponderance of the evidence, the ombudsman shall inform the complainant and the agency involved of such determination.

2.12(2) *Complaint indeterminate.* If, after completing an investigation, the ombudsman is unable to conclusively determine based upon a preponderance of the evidence whether the complaint is substantiated or unsubstantiated, the ombudsman shall inform the complainant and the agency involved of such conclusion.

2.12(3) *Complaint substantiated.* If, after completing an investigation, the ombudsman determines the complaint is substantiated based upon a preponderance of the evidence, the ombudsman shall inform the complainant and the agency involved of the findings of fact and conclusions. If appropriate, the ombudsman shall also inform the agency of any recommendation that:

a. The matter be further considered by the agency;

b. The administrative action be modified or canceled;

c. A rule on which an administrative action is based be altered;

d. Reasons be given for an administrative action; or

e. Any other action be taken by the agency.

2.12(4) *Agency response to recommendations.* If the ombudsman requests, the agency shall notify the ombudsman within 20 days in writing of any action taken or to be taken on the recommendations or the reasons for not complying with the recommendations.

2.12(5) *Legislative action.* If the ombudsman believes that a law resulted in administrative action which was unfair or otherwise objectionable, the ombudsman shall notify the general assembly of desirable statutory change. The ombudsman may give notification by submitting a legislative proposal or by presenting testimony or statements to the general assembly or one of its committees or members regarding the statutory change.

2.12(6) *Referral for disciplinary or criminal action.* The ombudsman shall refer a public official, employee or other person for disciplinary or criminal proceeding, if such referral is warranted under rule 141—2.15(2C).

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.13(2C) Investigative reports.

2.13(1) *Issuance of reports.* The ombudsman may prepare a report of the findings of fact, conclusions, and recommendations relevant to an investigation.

a. Critical reports. If the ombudsman determines as a result of an investigation that an administrative action of an agency, officer or employee warrants criticism, the ombudsman may issue a critical report containing the findings, conclusions and recommendations relevant to that investigation.

b. Special reports. A special report may be issued if the findings of fact, conclusions, or recommendations are not critical of an agency, or an officer or employee of an agency, but are of significant interest to the public.

2.13(2) *Publication of reports.* The ombudsman may publish and send a critical report or a special report to the governor, the general assembly or any of the committees of the general assembly. Any published report sent to the governor, the general assembly or any of its committees becomes public information and may be disseminated to the news media and to any interested members of the general public upon request.

2.13(3) *Prepublication procedure for critical reports.* Before publishing a critical report or announcing a conclusion or recommendation which criticizes an agency, officer or employee, the ombudsman shall consult with that agency, officer or employee.

a. Transmission to agency. The ombudsman shall transmit a copy of the critical report to the agency and each officer or employee who is a subject of the criticism and allow the agency, officer or employee a reasonable opportunity to reply to the report in writing.

b. Reply to report. The agency, officer or employee shall notify the ombudsman within 7 days from the date the critical report is received of any decision by that agency, officer or employee to make a reply. The agency, officer or employee shall be allowed 30 days from the date of receipt of the critical report to submit a written reply to the ombudsman. The ombudsman may for good cause extend the time allowed to submit the reply, if an extension is requested by the agency, officer or employee.

c. Comment to reply. The ombudsman may comment on any reply from an agency, officer or employee. The comments may include modifications by the ombudsman to any findings, conclusions, or recommendations in the critical report. The ombudsman shall transmit in writing any comments to the replying agency, officer or employee.

d. Reply or comment attached to report. Any unedited reply made by an agency, officer or employee and any written comments by the ombudsman shall be attached to every critical report which is published, sent, or disseminated by the ombudsman, unless inclusion of the reply is waived by the agency, officer or employee.

e. Confidential information not published. The ombudsman may not publish any confidential information which the ombudsman is not authorized to disclose or is prohibited from disclosing by law. The ombudsman may prepare, for the purpose of publication, an edited version of the critical report, from which confidential information has been deleted or excluded. The ombudsman shall transmit the edited version of the critical report to the agency, officer or employee and consult with that agency, officer or employee to ensure the report does not contain confidential information that may not be disclosed. Any reply or comment which is attached to this report and which contains confidential information that may not be disclosed shall likewise be edited to delete or exclude the confidential information.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.14(2C) Annual reports.

2.14(1) *When and to whom submitted.* Pursuant to Iowa Code section 2C.18, the ombudsman shall by April 1 of each year submit an economically designed and reproduced annual report to the general assembly and to the governor concerning the activities and work performed during the preceding calendar year.

2.14(2) *Inclusion of reply by agency or official.* If the annual report summarizes or discusses the findings, conclusions or recommendations in a critical report and names the agency, official or employee

involved, the annual report shall also include any unedited reply made by the agency, official or employee to the critical report, unless inclusion of the reply is waived by the agency or official.
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.15(2C) Referral for disciplinary or criminal action. If the ombudsman believes that a public official, employee, or other person has acted in a manner warranting a disciplinary or criminal proceeding, the ombudsman shall refer the matter to the appropriate authorities.
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.16(2C) Privileges and immunities.

2.16(1) *Immunity of ombudsman.* Except for removal from office as provided in Iowa Code chapter 66 or for employment-related claims, no civil action or other proceeding shall be commenced against the ombudsman or any member of the staff for any official act or omission performed pursuant to the provisions in Iowa Code chapter 2C, unless the act or omission is actuated by malice or is grossly negligent.

2.16(2) *Testimonial privilege.* The ombudsman or any member of the staff shall not be compelled to testify in any judicial or administrative proceeding with respect to any matter involving the exercise of the ombudsman's official duties, except as may be necessary to enforce the provisions of Iowa Code chapter 2C.
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.17(2C) Penalties for obstruction.

2.17(1) *Penalties.* As provided in Iowa Code section 2C.22, any person who willfully obstructs or hinders the lawful actions of the ombudsman or any member of the staff, or who willfully misleads or attempts to mislead the ombudsman or a member of the staff in the course of an inquiry or investigation, shall be guilty of a simple misdemeanor.

2.17(2) *Prosecution.* The ombudsman shall refer for prosecution a violation of Iowa Code section 2C.22 to the county attorney in the county where the violation occurred.
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

These rules are intended to implement Iowa Code sections 2C.1, 2C.8 to 2C.22, and 70A.28.

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◊ Two or more ARCs

CHAPTER 3
INFORMATION PRACTICES
[Prior to 3/30/94, see 210—Chapter 5]

141—3.1(2C,22) Definitions. As used in this chapter:

"Agency" means the office of ombudsman.

"Confidential record" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records of information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record.

"Custodian" means the agency or a person lawfully delegated authority by the agency to act for the agency in implementing Iowa Code chapter 22.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" means the whole or a part of a public record, as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

"Record system" means any group of records under the control of the agency from which a record may be retrieved by a personal identifier, such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.2(2C,22) Statement of policy. This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records and access to records. The purpose of this chapter is to facilitate public access to open records and to guide agency determinations with respect to the handling of confidential records and the implementation of the Iowa fair information practices Act.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.3(2C,22) Requests for access to records.

3.3(1) *Location.* A request for access to a record should be directed to the ombudsman at the Office of Ombudsman, Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. The agency may also be reached at the following numbers: telephone (515)281-3592, 1-888-426-6283 (1-888-IA-OMBUD), TDD/TTY (515)242-5065, and fax (515)242-6007.

3.3(2) *Office hours.* Access to records shall be available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, except designated state holidays.

3.3(3) *Request for access.* Requests for access to records may be made in writing, in person, by telephone, by e-mail, or by facsimile (fax). Requests shall identify by name and description the particular records sought in order to facilitate the location of the record. Requests by mail, telephone, e-mail, or facsimile (fax) shall also include the name, address, e-mail, and telephone or fax number of the person requesting the information. A person shall not be required to give a reason for the request.

3.3(4) *Response to requests.*

a. Access to an open record of the agency shall be provided promptly upon request. If the size or nature of the request makes prompt access impracticable, the custodian shall comply with the request as soon as practicable. Access to an open record may be delayed for one of the purposes authorized by Iowa Code subsection 22.8(4) or 22.10(4). The custodian shall notify the requester of the reason for a delay in access to an open record and an estimate of the length of that delay and, upon request, shall provide such notice in writing.

b. The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code subsections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public

to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 141—3.4(2C,22) and other applicable provisions of law.

3.3(5) *Security of record.* Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. A person may not search or remove any record from agency files without permission from the custodian. A person may not cause damage or disorganization to any agency records.

3.3(6) *Copying.* A reasonable number of copies of a record may be made in the agency's office. If photocopy equipment is not available in the agency office, the custodian shall permit examination of the record in the office and shall arrange to have copies made as soon as practicable elsewhere.

3.3(7) *Fees.* To the extent permitted by law, the agency may charge fees in connection with the examination or copying and may waive payment of such fees when the imposition of fees is inequitable or when a waiver is in the public interest.

a. Copying and postage costs. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at costs as determined by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged.

b. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the time required is in excess of one-half hour. The hourly fee charged shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this supervisory function.

c. Search fees. If the request requires research or if the records cannot readily be retrieved by the agency, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

d. Advance deposit. When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require the requester to make an advance payment to cover all or a part of the estimated fee. When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.4(2C,22) Access to confidential records. Under Iowa Code section 22.7 or 2C.8 or other applicable provisions of law, the custodian may disclose certain confidential records to one or more members of the public, or may be authorized or required to release specified confidential records in certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 141—3.3(2C,22):

3.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

3.4(2) *Requests.* The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

3.4(3) *Notice to subject of record.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8 and may indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

3.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written

notification of the denial is desired, the custodian shall promptly provide such a notification which is signed by the custodian and which includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

3.4(5) *Request granted.* When the custodian grants a request for access to a confidential record, the custodian shall notify the requester and indicate any lawful restrictions imposed on the requester's examination and copying of the record.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.5(2C,22) Requests to treat record as confidential. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7 or 2C.8, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

3.5(1) *Persons who may make request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7 or 2C.8, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection or disclosure.

3.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be filed with the custodian in writing and shall set forth the factual and legal basis for the request. If possible, the request shall be accompanied by the original or a copy of the record, which identifies the parts of the record requested to be treated as confidential. A person filing such a request may be required to provide proof necessary to establish relevant facts.

3.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record.

3.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection or disclosure is filed or when the custodian receives a request for access to the record by a member of the public.

3.5(5) *Request granted or deferred.* If the custodian grants the request or defers action on the request, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request shall be made available for public inspection or disclosure in lieu of the original record.

3.5(6) *Request denied.* If the custodian denies the request, the custodian shall notify the requester in writing of that decision and the reasons for that decision. Upon application by the requester, the custodian may, in good faith, reasonably delay allowing examination or disclosure of the record so that the requester may seek injunctive relief under Iowa Code section 22.8 or other applicable provision of law. The custodian shall notify the requester in writing of the time period allowed for the requester to seek injunctive relief.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.6(2C,22) Additions, dissents or objections to records. Except as otherwise provided by law, a person may file a request with the custodian to review and, in addition, to have a written statement of additions, dissents, or objections entered into a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send such request or written statement to the custodian. The request or written statement must be dated and signed by the requester and have the current address and telephone number of the requester or requester's representative.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.7(2C,22) Notice to suppliers of information. The agency shall notify persons completing agency forms of the use that will be made of personal information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be by rule, on the form used to collect the information, on a separate fact sheet or letter, in a brochure, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. Notice is not required with discovery requests in litigation or administrative proceedings, subpoenas, or similar demands for information.
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.8(2C,22) Release to subject.

3.8(1) The subject of a confidential record may file a written request to review confidential records about the person who is the subject of a confidential file, as provided in rule 141—3.6(2C,22). All information in case files, including the identity of a person providing the information to the agency, may be withheld from the subject pursuant to Iowa Code section 2C.8. The agency need not release records that are the work product of an attorney or are otherwise privileged and need not release records that are otherwise authorized by law.

3.8(2) When a record concerns multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.9(2C,22) Consensual disclosure of confidential records. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity.

3.9(1) *Disclosure to legal counsel.* Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

3.9(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.10(2C,22) Disclosure without consent of subject.

3.10(1) *Open records.* Open records are routinely disclosed without the consent of the subject.

3.10(2) *Confidential records.* To the extent allowed by law, the agency may disclose confidential records without the consent of the subject of a confidential record. Following are instances where the agency may disclose confidential information without consent of the subject:

a. Disclosure to those officers, employees, or agents of the agency who need the information in the performance of their duties. The custodian of the record shall determine what constitutes legitimate need to use the confidential information.

b. Disclosure of information related to cases to complainants or other state or local governmental agencies, as appropriate to carry out the agency's statutory functions. The agency may disclose the identities of complainants or witnesses who appear before the agency, if disclosure will facilitate an inquiry or investigation by the agency or enable the agency to sufficiently present its investigative findings and conclusions.

c. Disclosure of any records, upon request, to the general assembly, any standing committee of the general assembly, or the governor, under Iowa Code section 2C.8, except that confidential information provided by other agencies shall not be disclosed.

d. Release of critical reports, special reports, or annual reports to the general assembly or any of its committees, the governor, the news media, or interested members of the public.

e. Disclosure of information to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigations and possible criminal prosecution, civil court action, or regulatory order.

g. Disclosure of information to the appropriate authorities concerning the conduct of any public official or employee which warrants disciplinary proceedings.

h. Disclosure of information to a recipient who has given to the agency written assurance that the record will be used solely as a statistical research or reporting record, if the information is transferred in a form that does not identify the subject.

i. Disclosure of information to an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual, provided that notice of the disclosure is first transmitted to the last-known address of the subject.

j. Disclosure of information to the legislative services agency.

k. Disclosure of information in the course of an employee disciplinary proceeding.

l. Disclosure of information in response to a court order.

m. Any disclosure of information specifically authorized by the statute under which the record was collected or maintained.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.11(2C,22) Availability of records.

3.11(1) *Open records.* Agency records are open for public inspection and copying, unless otherwise provided by rule or law. This agency also has possession of records which may be open records but which are copies of records from other agencies, which have been filed in judicial or administrative proceedings, or which are available in the state law library. This agency may refer persons to the originating agency, the clerk of the appropriate court, or the law library for those records. This ensures that the requester receives a clean official copy of the record and protects the agency against unintended disclosure of confidential information.

3.11(2) *Confidential records.* Confidential records may be withheld from public inspection by the agency. The following confidential records are listed by category, according to the legal basis for withholding them from public inspection:

a. All records, including case files, related to the statutory functions of the agency, which are confidential under Iowa Code section 2C.8.

b. Records which are exempt from disclosure under Iowa Code section 22.7.

c. Those portions of agency staff manuals, instructions or other statements issued, which set forth criteria or guidelines used by agency staff in making investigations or in the selection or handling of cases which will be or are being litigated, when their disclosure would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the agency. The agency also maintains some office or policy manuals provided by other agencies concerning the operations of those agencies. Some information in office manuals may be confidential under Iowa Code section 17A.2(11)(f), 17A.3(1)(d), or 2C.9(4) or other applicable law.

d. Records which constitute attorney work product or attorney-client communications or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4) and 622.11, Iowa R.C.P. 122(c), Fed. R.Civ.P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

e. Any other records made confidential by law.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.12(2C,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in the record systems and the means by which that information is stored. Unless otherwise stated, the authority to collect the information is provided by Iowa Code chapter 2C and the statutes governing the subject matter of the record. The agency maintains record systems that include case files, litigation files, personnel files, and applicant files.

3.12(1) *Case files.* Case files contain information related to complaints and information requests, stored in either paper form or electronically in a case management system. These files contain names and locations of persons who contacted the agency, methods of contact, agency staff members who handled the case files, the dates the files were opened and closed, the subjects of the contacts, and the agencies involved. The files also include notes and memoranda of agency staff members and may include research materials, correspondence, and documents provided by complainants or agencies involved in the complaint. These files are confidential pursuant to Iowa Code section 2C.8.

3.12(2) *Litigation files.* The litigation files contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. These files include pleadings, briefs, depositions, discovery materials, docket sheets, general correspondence, attorney-client correspondence, documents, memoranda, investigative information, research materials, witness information, attorney's notes, information compiled under the direction of the attorney, and case management records. These files may be stored in paper or electronic form. These files contain materials which are confidential as attorney work product and attorney-client communications or which are confidential under Iowa Code section 2C.8 or other applicable law, or because of a court order.

3.12(3) *Personnel files.* The personnel files contain information about the employees in the agency. These files include payroll records, information required for tax withholding, biographical information, medical information relating to disability, information concerning employee benefits, performance evaluations and reviews, disciplinary information, and other information concerning employer-employee relationships. These records may be stored in paper or electronic form. Some information in these records is confidential under Iowa Code section 22.7.

3.12(4) *Applicant files.* The applicant files contain information about applicants for positions with the agency. These files include biographical information, correspondence, equal employment opportunity and affirmative action data, and other preemployment materials. These files may be stored in paper or electronic form. Some information in these files is confidential under Iowa Code section 22.7 or other applicable law.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.13(2C,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 141—3.12(2C,22). These records are not stored or retrieved by personal identifiers. These records are routinely available to the public; however, the agency's files of these records may contain some confidential information. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 2C and the statutes governing the subject matter of the record.

3.13(1) *Administrative records.* The administrative records include documents concerning budget, administrative or personnel reports, purchasing, printing and supply requisitions, property inventory, time sheets, and office policies for employees.

3.13(2) *Publications.* Publications include a variety of books, periodicals, newsletters, government documents, and similar publications, which agency staff use as reference, research or resource materials. These materials are generally available for public examination but may be protected by copyright law.

3.13(3) *Office publications.* Office publications include a variety of documents issued by the agency, including pamphlets, news releases, critical reports, special reports, and annual reports. Critical reports and special reports are also maintained in some files within the case files record system. Critical reports, special reports, and annual reports may contain information about individuals.

3.13(4) *Rule-making records.* Rule-making records consist of official documents produced during promulgation of agency rules.

3.13(5) *Office manuals.* Agency staff may maintain office manuals which contain memoranda or statements of various policies and procedures related to performance of the agency's functions. The agency also maintains some office or policy manuals provided by other agencies concerning the operations of those agencies. Some information in office manuals may be confidential under Iowa Code sections 17A.2(11)(f) and 17A.3(1)(d) or other applicable law.

3.13(6) *Legal counsel research files.* The agency's legal counsel maintains research files on a variety of legal issues related to the functions of the agency or specific case files. These files include copies of cases or other published materials, briefs, notes, and legal memoranda or opinions to agency staff. Some files regarding issues in particular cases may contain information about individuals. Some records in these files are confidential as attorney work product or attorney-client communications, or are confidential under Iowa Code section 2C.8 or other applicable law.

3.13(7) *Form files.* Form files contain various blank forms used by agency staff in the performance of agency functions.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.14(2C,22) Data processing systems. None of the data processing systems used by the agency compare personally identifiable information in one record system with personally identifiable information in another record system.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.15(2C,22) Applicability. This chapter does not:

3.15(1) Require the agency to index or retrieve records which contain information about an individual by that person's name or other personal identifier.

3.15(2) Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3.15(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the rules of another agency.

3.15(4) Make available records which have been compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

These rules are intended to implement Iowa Code sections 2C.8, 2C.9(4), and 22.11.

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[Adopted and published 3/30/94 pursuant to Iowa Code section 2C.9(5), effective 5/1/94]
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

CHAPTER 4
RULE MAKING

141—4.1(2C) Applicability.

4.1(1) *Procedure exempt from Iowa Code chapter 17A.* Pursuant to Iowa Code section 2C.9(6), the promulgation of rules relating to the organization, operation, and procedures of the office of ombudsman is exempt from the provisions of Iowa Code chapter 17A, the Iowa Administrative Procedure Act.

4.1(2) *Definition.* As used in this chapter, "agency" means the office of the ombudsman.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—4.2(2C) Adoption of rule.

4.2(1) *Time of adoption.* The agency may adopt a rule at any time.

4.2(2) *Manner of adoption.* The agency is exempt from the procedural requirements for rule making in Iowa Code section 17A.4. The agency shall file each rule the agency adopted with the administrative code editor, who shall publish the rule in the Iowa Administrative Code. The agency shall file the rule for publication as soon as practicable after adoption of the rule.

4.2(3) *Review by service committee.* The agency may submit a proposed rule to the service committee of the legislative council for the committee's review and comment before the rule is adopted and published. If the agency submits a proposed rule to the service committee, the agency shall provide the text of the rule and include a preamble containing:

a. A statement of the purpose of the rule;

b. A reference to all rules repealed, amended, or suspended by the rule; and

c. A reference to the specific statutory or other authority authorizing adoption of the rule.

4.2(4) *Publication in Iowa Administrative Bulletin.* The agency may submit an adopted rule to the administrative rules review committee and request that the adopted rule be published in the Iowa Administrative Bulletin.

4.2(5) *Exempt from governor's review.* An adopted rule of the agency is not subject to review by the governor and may not be rescinded by executive order of the governor.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—4.3(2C) Contents, style, and form of rule.

4.3(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

a. The date the agency adopted the rule.

b. A reference to the specific statutory or other authority authorizing adoption of the rule; and

c. The effective date of the rule.

4.3(2) *Incorporation by reference.* The agency may incorporate, by reference in an adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency determines that the incorporation of its text in the agency-adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient.

a. The reference in the agency-adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the adopted rule does not include any later amendments or editions of the incorporated matter.

b. The agency may incorporate such matter by reference in an adopted rule only if the source from which the matter originated makes copies of it readily available to the public. The agency shall retain permanently a copy of any material incorporated by reference in a rule of the agency. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the agency or the originating source.

4.3(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of an adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall submit to the administrative code editor for inclusion in the Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material.

a. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the adopted rule and of significant issues involved in the rule. The statement shall also describe how a copy of the full text of the adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text at actual cost upon request.

b. At the request of the administrative code editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

4.3(4) *Style and form.* In preparing its rules for publication in the Iowa Administrative Code, the agency shall follow the uniform numbering system, form and style prescribed by the administrative code editor.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

These rules are intended to implement Iowa Code section 2C.9(6).

[Adopted and published 3/30/94 pursuant to Iowa Code section 2C.9(5), effective 5/1/94]

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

CHAPTER 12
CLAIMS FOR INDIGENT DEFENSE SERVICES

493—12.1(13B,815) Scope. This chapter sets forth the rules for submission, payment and court review of indigent defense fee claims. See 493—Chapter 7 for definitions of terms used in this chapter.

12.1(1) The state public defender will pay from the indigent defense fund attorney fees and costs for the following types of cases: commitment of sexually violent predators under Iowa Code chapter 229A; contempts; postconviction relief proceedings to the extent authorized under Iowa Code chapter 822; juvenile justice under Iowa Code section 232.141(3)(c); guardians ad litem for children in juvenile court under Iowa Code chapter 600 or respondents under Iowa Code chapter 600A; fees for appellate attorneys under Iowa Code section 814.11; fees to attorneys under Iowa Code section 815.7; fees for court-appointed counsel under Iowa Code section 815.10; violation of probation or parole under Iowa Code chapter 908; indigent's right to transcript on appeal under Iowa Code section 814.9; indigent's application for transcript in other cases under Iowa Code section 814.10; and special witnesses for indigents under Iowa Code section 815.4.

12.1(2) The state public defender will not pay for the costs for any type of administrative proceeding or any other proceeding under Iowa Code chapter 598, 600, 600A, 633, or 915 or other provisions of the Iowa Code.

12.1(3) The Iowa Code requires the state public defender to approve only those indigent defense fee claims that are reasonable and appropriate under applicable statutes. In exercising this duty, the state public defender publishes rules and makes judgments considering what is statutorily permitted, fair for claimants, fair for indigent clients (who, by law, are required to reimburse the state for the costs of their defense to the extent they are reasonably able to pay such costs), and consistent with good stewardship of public appropriations.

[**ARC 1512C**, IAB 6/25/14, effective 7/30/14]

493—12.2(13B,815) Submission and payment of attorney claims.

12.2(1) *Required claim documents.* Court-appointed attorneys shall submit written indigent defense fee claims to the state public defender for review, approval and payment. These claims shall include the following:

a. A completed fee claim on a form promulgated by the state public defender.

(1) Adult fee claims, including all trial-level criminal and postconviction relief proceedings, misdemeanor appeals to district court, and applications for discretionary review or applications for interlocutory appeals to the Iowa supreme court, must be submitted on an Adult form. Juvenile fee claims, including petitions on appeal and applications for interlocutory appeals, must be submitted on a Juvenile form. Appellate fee claims, including claims for all criminal and postconviction relief appeals, work performed after the granting of an application for discretionary review or for interlocutory appeal, and work performed after full briefing is ordered following a juvenile petition on appeal, must be submitted on an Appellate form. For paper claims submitted on or before December 31, 2016, the claim forms may be downloaded from the state public defender Web site: http://spd.iowa.gov.

(2) Claims submitted on or after January 1, 2017, shall be submitted electronically via the online claims Web site: https://spdclaims.iowa.gov. Effective January 1, 2017, any reference in these rules to forms for Adult, Juvenile, or Appellate claims means the respective electronic claims submission page on the online claims Web site. The state public defender, at the state public defender's sole discretion, may grant limited exceptions to the requirement that claims be submitted electronically via the online claims Web site.

b. A copy of all orders appointing the attorney to the case.

(1) The appointment order must be signed by the court and either dated by the court or have a legible file-stamp.

(2) If, at the time of appointment, the attorney does not have a contract to represent indigent persons in the type of case and the county in which the action is pending, the appointment order must include either a finding that no attorney with a contract to represent indigent persons in that specific type of case

and that county is available or a finding that the state public defender was consulted and consented to the appointment.

(3) Claims for probation or parole violations and contempt actions are considered new cases, and the attorney must submit a copy of an appointment order for these cases. Appointment orders in parole violation cases must also contain the following findings:

1. The alleged parole violator requests appointment of counsel;
2. The alleged parole violator is indigent as defined in Iowa Code section 815.9;
3. The alleged parole violator, because of lack of skill or education, would have difficulty in presenting the alleged violator's version of a disputed set of facts, particularly when presentation requires the examining or cross-examining of witnesses or the offering or dissecting of complex documentary evidence; and
4. The alleged parole violator has a colorable claim that the alleged violation has not been committed, or there are substantial reasons which justify or mitigate the violation and make revocation inappropriate.

(4) If the venue is changed in a juvenile case, an order appointing the attorney in the new county must be submitted.

(5) A new appointment order is not necessary for trial counsel to request or resist an interlocutory appeal or an application for discretionary review.

(6) A new appointment order is not necessary to pursue or respond to a juvenile petition on appeal if the attorney was properly appointed to represent the client in juvenile court. If the original trial counsel withdraws or is removed from the case, the new appellate counsel must attach an order appointing the attorney for the appeal.

(7) An appointment order is not necessary if the state public defender determines the appointment order is unnecessary.

c. A copy of any application and court order authorizing the attorney to exceed the attorney fee limitations.

d. A copy of any court order that affects the amount to be paid or the client's right to counsel.

e. A copy of the dispositional order, the order granting a motion to withdraw prior to disposition, procedendo, or other court order documenting the "date of service" for the claim.

f. An itemization detailing all work performed on the case for which the attorney seeks compensation and all expenses incurred for which the attorney seeks reimbursement.

(1) The itemization must state the date and amount of time spent on each activity. Time must be reported in tenths of an hour. Time shall be rounded to the nearest tenth of an hour. For example, an attorney spending ten minutes performing an activity shall bill 0.2 hours, while an attorney spending seven minutes performing an activity shall bill 0.1 hours. The time spent on each activity must be separately itemized, except that one or more activities on the same day, each taking less than 0.1 hours, must be aggregated together with other activities so that the aggregate amount billed is at least 0.1 hours. If an attorney performs only a single activity taking less than 0.1 hours for a client on a day, the attorney may bill 0.1 hours regardless of the precise length of time spent on the activity. If an attorney performs multiple related activities on the same day, such as multiple e-mail or telephone exchanges, the activities must be aggregated together if separately itemizing the activities would result in claiming more time than the attorney actually spent performing the activities.

(2) The itemization shall separately designate time claimed for in-court time, out-of-court time, paralegal time and travel time.

(3) If another attorney performed any of the work, the itemization shall specify the name of the attorney performing each activity. It is permissible to use initials representing the name, so long as an explanation is provided as to the full name for each set of initials with the itemization.

(4) The itemization must be in chronological order.

(5) If the attorney seeks reimbursement for expenses incurred, the itemization must separately state each expense incurred, including any specific information required by rule 493—12.8(13B).

(6) For paper claims submitted on or before December 31, 2016, the itemization must be typed in at least 10-point type on 8½″ × 11″ paper. For claims submitted on or after January 1, 2017, the itemization

shall be submitted electronically via the Attorney Hours grid on the appropriate claims submission page on the online claims Web site. Separate electronic attachments of itemizations will not be accepted.

g. If the attorney was privately retained to represent the client prior to appointment, a copy of any representation agreement, written notice of the dollar amount paid to the attorney, and an itemization of services performed and how any funds provided were spent during the period prior to the court appointment. The state public defender will review the amount paid and hours spent before and after the court appointment in determining the appropriate attorney compensation on the claim.

12.2(2) *Failure to submit required documents.* Submitted claims for which the entire claim form has not been properly completed or which do not include the documents required by subrule 12.2(1) may be returned to the attorney for additional information and resubmission within the time required by paragraph 12.2(3)*"d."* If the attorney fails to submit all the required documentation to support a claim, the state public defender may request additional information or may deny all or a portion of the claim.

12.2(3) *Timely claims required.* Claims submitted prior to the date of service shall be returned to the claimant unpaid and may be resubmitted to the state public defender after the date of service. Claims that are not submitted within 45 days of the date of service as defined in this subrule may be denied, in whole or in part, as untimely unless the delay in submitting the claim is excused by paragraph 12.2(3)*"f."* Attorney fees and expenses that are submitted on a claim denied as untimely under this subrule may be resubmitted on a subsequent claim that is timely submitted with respect to a subsequent date of service in the same case. For purposes of this subrule, a probation, parole, or contempt proceeding is not the "same case" as the underlying proceeding.

a. Adult claims. For adult claims, "date of service" means the date of filing of an order indicating that the case was dismissed or the client was acquitted or sentenced, the date of a final order in a postconviction relief case, the date of mistrial, the date on which a warrant was issued for the client, or the date of a court order authorizing the attorney's withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, or mistrial. The filing of a notice of appeal is not a date of service. If a motion for reconsideration is filed, the date on which the court rules on that motion is the date of service. For interim adult claims authorized by subrule 12.3(3) or 12.3(4), the date of service is the last day on which the attorney claimed time on the itemization of services.

b. Juvenile claims. For juvenile claims, "date of service" means the date of filing of an order as a result of the dispositional hearing or most recent postdispositional hearing that occurs while the client is still an active party in the case, the date on which the client ceased to be a party, the date of a court order authorizing the attorney's withdrawal from a case prior to the filing of the final ruling with respect to the client, the date jurisdiction is waived to adult court, the date on which the venue is changed, the date of dismissal, or the file-stamped date of a procedendo resulting from a petition on appeal. The date of a family drug court meeting, family team meeting, staffing, or foster care review board hearing is not a date of service.

c. Appellate claims. For appellate claims, "date of service" means the date on which the case was dismissed, the date of a court order authorizing the attorney's withdrawal prior to the filing of the proof brief, the date on which the proof brief was filed, or the date on which the procedendo was issued.

d. Notices of action and returned claims. For claims of any type that are filed as a result of a notice of action letter or a returned fee claim letter, "date of service" means the date of the notice of action letter or returned fee claim letter. But a claim that is denied as untimely does not become timely merely because it was resubmitted within 45 days of a returned fee claim letter. A timely claim returned to the attorney for additional information shall continue to be deemed timely only if resubmitted with the required information within 45 days of being returned by the state public defender.

e. Court orders. For claims of any type that are filed as a result of a court order after hearing for review of the fee claim, "date of service" means the file-stamped date of the order.

f. Exceptions to the 45-day rule. The state public defender may in the state public defender's sole discretion approve a claim that was not submitted within 45 days of the date of service only if the delay in submitting the claim was caused by one of the following circumstances:

(1) The death of the attorney;

(2) The death of the spouse of the attorney, a child of the attorney, or an employee of the attorney who was responsible for assisting in the preparation of the attorney's fee claims;

(3) A serious illness, injury, or other medical condition that prevents the attorney from working for more than 3 consecutive days and occurs in the last 5 days before the expiration of the 45-day period for timely claims;

(4) The attorney's need to care for the attorney's spouse or child with a serious illness, injury, or other medical condition that prevents the spouse or child from working, attending school, or performing other regular daily activities for more than 3 consecutive days and occurs in the last 5 days before the expiration of the 45-day period for timely claims.

(5) Other circumstances in which the state public defender determines, in the sole discretion of the state public defender, that enforcement of the 45-day rule would impose an undue burden and that payment of the claim should in fairness be made, in whole or in part. The state public defender, in the exercise of such discretion, may consider factors including, but not limited to:

1. The extent to which the 45-day rule was violated;
2. The justification provided by the attorney;
3. The attorney's claim history;
4. The extent of prejudice likely to be experienced by the attorney, the state public defender, and any party to the proceeding, including the attorney's client.

Any claim submitted pursuant to subparagraph (1) must be submitted within 45 days of the death of the attorney. Any claim submitted pursuant to subparagraph (2) must be submitted within 30 days of the death that caused the delay. Any claim submitted pursuant to subparagraph (3) or (4) must be submitted within 15 days of the end of the illness, injury, or medical condition that caused the delay. An attorney claiming an exception to the 45-day rule shall submit with the claim a letter explaining the applicable exception and written documentation supporting the exception.

12.2(4) *Valid appointment required.* Claims for compensation from an attorney appointed as counsel or guardian ad litem may be denied if the attorney was appointed contrary to Iowa Code section 814.11 or 815.10. Claims for which court-appointed counsel at state expense is not statutorily authorized or which are not payable from the indigent defense fund created by Iowa Code section 815.11 shall be denied.

a. Appellate appointments. Claims for compensation from an attorney whose appointment as counsel or guardian ad litem at the appellate level does not comply with Iowa Code section 814.11 may be denied in whole or in part.

b. Trial-level designations. Claims by an attorney whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after July 1, 2009, may be denied in whole or in part if the state public defender filed a designation effective at the time of the appointment designating a local public defender, nonprofit corporation, or attorney to represent indigent persons in that type of case in the county in which the case was filed, unless the appointment order and any supporting documentation submitted with the claim demonstrate that:

(1) The state public defender's designee and any successor designee have withdrawn from the case or have been offered and declined to take the case; or

(2) The state public defender's designee and any successor designee would have withdrawn from or would have declined to take the case had the appointment been offered.

c. Trial-level contract attorney preference. Claims by an attorney whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after February 1, 2012, may be denied in whole or in part unless:

(1) At the time of the appointment, the attorney had a contract with the state public defender to represent indigent persons in that specific type of case and that county in which the action was pending; or

(2) The appointment order includes a specific finding that no attorney with a contract to represent indigent persons in that specific type of case and that county in which the action was pending is available or a finding that the state public defender was consulted and consented to the appointment; or

(3) After the appointment, the attorney entered into a contract with the state public defender, or amended the attorney's existing contract, to represent indigent persons in the specific type of case and

the county in which the action was pending, in which case only the portion of the claim for the services performed prior to the effective date of the contract shall be denied.

12.2(5) *Scope of appointment.* Claims shall only be paid for services rendered and expenses incurred within the scope of the attorney's court appointment. Any other fees or expenses claimed shall be denied.

a. Services prior to appointment. Claims for services rendered or expenses incurred prior to the effective date of the attorney's appointment are not payable within the scope of the attorney's appointment and shall be denied.

b. Representation of parents after termination of parental rights. Claims for services rendered or expenses incurred by an attorney for representing a parent in a child in need of assistance case or termination of parental rights case for work performed after the date on which the termination of that parent's parental rights becomes final, either on appeal or because no appeal was taken, are not payable within the scope of the attorney's appointment and shall be denied.

c. Guardian ad litem for children over the age of 18. Claims for services rendered or expenses incurred by a guardian ad litem for a child who is aged 18 or older and involved in a juvenile court proceeding are only within the scope of appointment if the court enters an order appointing the guardian ad litem for the limited purposes of continuing a relationship with the child and to provide advice to the child relating to the child's transition plan under Iowa Code section 232.2 beyond the child's eighteenth birthday. The appointment shall end on the date a court order relieving the guardian ad litem of further duties or the date of a court order closing the juvenile case, whichever occurs first, and claims for services rendered or expenses incurred after such date shall be denied. Neither a parent nor guardian of the child in interest is entitled to court-appointed counsel during the post-age 18 transition period.

12.2(6) *Rate of compensation.* Claims for compensation in excess of the applicable rate of compensation established by rule 493—12.4(13B,815) or in the attorney's contract with the state public defender are not payable and shall be reduced to the applicable rate of compensation.

12.2(7) *Excessive claims.* The amount of a claim for services provided or expenses incurred that is excessive shall be reduced by the state public defender to an amount which is not excessive. Only reasonable and necessary compensation and expenses will be approved for payment.

12.2(8) *Review of claims after contract termination for improper billing practices.* A claim submitted by an attorney whose contract with the state public defender is terminated for improper billing practice shall be paid only to the extent that the claim is supported by authentic, independent, written documentation originating from sources other than the attorney, even if such a claim would otherwise be payable under this chapter. Any portion of a claim for a service performed or expense incurred that is not independently verified by such documentation is not payable under the contract and shall be denied.

a. Acceptable documentation. Independent, written documentation that may support a claim for services performed or expenses incurred by the attorney includes, but is not limited to:

(1) Affidavits of clients, witnesses, prosecutors, service providers, department of human services staff, court staff, or other persons who can verify that the attorney performed a service for a specific length of time on a specific day. Affidavits from employees of the attorney or the attorney's firm, family members of the attorney, or other attorneys within the same law firm as the attorney are not independent documentation and are insufficient to confirm a claim for a service performed or expense incurred.

(2) Court orders or other documents in the court file that verify the attorney's attendance at a court proceeding, as well as the date, time, duration, and location of the proceeding.

(3) Deposition transcripts and other records of the certified shorthand reporter that verify the attorney's attendance at a deposition, as well as the date, time, duration, and location of the deposition.

(4) Records of a jail or correctional facility that document the date, time, and duration of visits, telephone calls, or videoconferencing sessions with clients or witnesses in custody in the facility.

(5) Records of a telecommunication provider that verify the length of telephone calls, long-distance expenses, or fax expenses.

(6) Records of an online legal research service that document the date, time, duration, and nature of legal research performed.

(7) Calculations from mapping software, such as MapQuest or Google Maps, of the distance traveled to a location where a verified service was provided.

(8) Original printed receipts for expenses incurred.

b. Pending claims. Any claims submitted by an attorney that have not yet been approved by the state public defender when the attorney's contract with the state public defender is terminated for improper billing practices shall be returned to the attorney. The attorney may resubmit any claim returned in its entirety, or a portion thereof, within the time required by paragraph 12.2(3)*"d,"* with the additional documentation required by this subrule confirming all time and expenses claimed on the itemization. The resubmitted claim shall be reviewed consistent with the requirements of this subrule. Any claim not resubmitted within the time required by paragraph 12.2(3)*"d"* shall be denied.

c. Court review. An attorney whose claim is denied or reduced pursuant to this subrule may seek court review of the state public defender's action on that claim by filing a motion for court review as provided for by rule 493—12.9(13B,815). But if the attorney has sought review of the state public defender's decision to terminate the attorney's contract for improper billing practices, the court shall stay proceedings on the attorney's motion until the attorney has exhausted all administrative remedies, final judgment has been entered in any judicial review action under Iowa Code chapter 17A, and any appeal of such judgment is decided. The final judgment of any judicial review action under Iowa Code chapter 17A regarding the termination of the attorney's contract conclusively determines the applicability of this subrule. If the attorney fails to seek judicial review of the state public defender's decision to terminate the attorney's contract, the state public defender's notice to the attorney that the state public defender is terminating the attorney's contract for improper billing practices is conclusive evidence that this subrule applies, and the attorney may not challenge the termination decision or the applicability of this subrule in the motion for review of the state public defender's action on the fee claim under rule 493—12.9(13B,815).

12.2(9) *Approval of claims.* Claims shall be forwarded to the department for final processing and payment only after the state public defender has determined that payment of the claim is appropriate under this chapter and under Iowa law. No payments shall be made from the indigent defense fund except with the authorization of the state public defender.

[**ARC 8090B**, IAB 9/9/09, effective 9/15/09; **ARC 8372B**, IAB 12/16/09, effective 1/20/10; **ARC 9293B**, IAB 12/29/10, effective 12/7/10; **ARC 9447B**, IAB 4/6/11, effective 5/11/11; **ARC 9938B**, IAB 12/28/11, effective 2/1/12; **ARC 1512C**, IAB 6/25/14, effective 7/30/14; **ARC 2378C**, IAB 2/3/16, effective 3/9/16; **ARC 2783C**, IAB 10/26/16, effective 11/30/16]

493—12.3(13B,815) Interim claims. Claims will be paid at the earlier of the conclusion of the case or when legal representation of the client under the original court appointment is concluded, except as provided for in subrule 12.3(1), 12.3(2), 12.3(3), or 12.3(4).

12.3(1) *Juvenile cases.* An initial claim for services in a juvenile case may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each court hearing held in the case. A court hearing does not include family drug court, family team meetings, staffings or foster care review board hearings.

12.3(2) *Appellate cases.* A claim for work performed may be submitted in appellate cases after the filing of the attorney's proof brief. A subsequent claim may be submitted after the procedendo is filed.

12.3(3) *Class A felonies.* Interim claims in Class A felony cases may be submitted once every three months, with the first claim submitted at least 90 days following the effective date of the attorney's appointment.

12.3(4) *Other cases.* In all other cases, claims filed prior to the conclusion of the case will not be paid except with prior written consent of the state public defender.

12.3(5) *Change of employment.* A change of employment is not a basis for submitting an interim claim. An attorney changing firms must wait to submit a claim until the conclusion of the case unless the attorney withdraws from the case or subrule 12.3(1), 12.3(2), or 12.3(3) applies. Because indigent defense contracts are with the attorney and not with the law firm, the state public defender shall send payments to whatever person or law firm the departing attorney directs.

12.3(6) *Approval of interim claims.* Approval of any interim claims shall not affect the right of the state public defender to review subsequent claims or the aggregate amount of the claims submitted.

[**ARC 1512C**, IAB 6/25/14, effective 7/30/14]

493—12.4(13B,815) Rate of compensation. Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999, and before July 1, 2006:

Attorney time:	Class A felonies	$60/hour
	Class B felonies	$55/hour
	All other criminal cases	$50/hour
	All other cases	$50/hour
Paralegal time:		$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2006, and before July 1, 2007:

Attorney time:	Class A felonies	$65/hour
	All other criminal cases	$60/hour
	All other cases	$55/hour
Paralegal time:		$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2007:

Attorney time:	Class A felonies	$70/hour
	Class B felonies	$65/hour
	All other criminal cases	$60/hour
	All other cases	$60/hour
Paralegal time:		$25/hour

12.4(1) *Applicability to juvenile cases.* In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney $50 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. In a juvenile case to which the attorney was appointed after June 30, 1999, but before July 1, 2006, the state public defender will pay the attorney $55 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2006. In a juvenile case to which the attorney was appointed after June 30, 2006, but before July 1, 2007, the state public defender will pay the attorney $60 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2007. However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.

12.4(2) *Appointments before July 1, 1999.* In a case to which the attorney was appointed before July 1, 1999, attorney time shall be paid at a rate that is $5 per hour less than the rates established pursuant to 2000 Iowa Acts, chapter 1115, section 10. Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced.

12.4(3) *Applicability to appellate contracts.* Rescinded IAB 6/25/14, effective 7/30/14.

12.4(4) *All other cases.* As used in this rule, the term "all other cases" includes appeals, juvenile cases, contempt actions, representation of material witnesses, and probation/parole violation cases, postconviction relief cases, restitution, extradition, and sentence reconsideration proceedings without regard to the level of the underlying charge.

[**ARC 1512C**, IAB 6/25/14, effective 7/30/14]

493—12.5(13B,815) Payable attorney time.

12.5(1) *Maximum daily hours.* An attorney appointed as counsel or guardian ad litem must not perform services for indigent persons or submit claims to the state public defender for payment for such services for more than 12 hours of the attorney's time in any calendar day except as provided in this subrule.

a. An attorney may perform services for indigent persons and submit claims to the state public defender for payment for such services for more than 12 hours and less than or equal to 16 hours in a calendar day if and only if the attorney is in trial or other contested court hearing lasting more than one day or the attorney is preparing for such a trial or hearing that will be occurring within the next seven days.

b. If an attorney performs services for indigent persons and submits claims to the state public defender for payment for such services for more than 12 hours and less than or equal to 16 hours in a calendar day, the attorney shall include with each claim form submitted to the state public defender that claims time for that date, even if the amount claimed on that claim form is less than 12 hours, a letter specifying the total hours worked for indigent persons, any additional time billed to other private clients on that date or certifying that no other time was billed to any other client, and explaining the need to work more than 12 hours.

c. Any time claimed by an attorney appointed as counsel or guardian ad litem in excess of 12 hours on a calendar day, except as permitted by this subrule, and any time claimed in excess of 16 hours on a calendar day, shall not be paid. If the time is claimed on multiple claims, the most recently submitted claim claiming time on a particular calendar day shall be reduced so as not to pay more than the maximum authorized daily hours. If more than the maximum authorized amount is inadvertently paid by the state public defender, the attorney shall reimburse the state public defender upon written notice of the improper payment.

12.5(2) *Standardized and estimated billing prohibited.* All time submitted on the itemization of services must be the actual time worked providing services to the client. Attorneys are prohibited from using standardized billing estimates for tasks, such as billing 0.1 for every page of a document reviewed or 0.2 for every e-mail sent or received, or 1.0 hour for every court proceeding. Attorneys must also not use standardized billing for cases, such as billing the same set of standard tasks in every case regardless of whether the task was actually performed.

12.5(3) *Nonbillable time.* The following activities are not reasonable and necessary legal services for the indigent client, and therefore time and expenses for such activities are not payable under the attorney's appointment and shall be denied:

a. Clerical work, including but not limited to opening and closing files; making photocopies; opening or sending mail; sending cover letters; transmitting copies of documents to a client, another party or clerk of court; sending faxes; picking up or delivering documents; drafting internal file memos; giving instructions to support staff; or billing;

b. Preparation of motions to withdraw from a case, and other time related to withdrawing from a case, when the withdrawal is made in order to retire from the practice of law, discontinue or reduce indigent defense representation, pursue another job, or is otherwise for the attorney's personal benefit;

c. Overhead, including time spent managing the operations of the attorney's law practice, office lease payments, or support staff salaries;

d. Preparation of the fee claim, itemization of services, or other time-keeping activities;

e. Preparation of an application or proposed order to exceed the fee limitations, court time obtaining such an order, or review of the order granting or denying the application;

f. Preparation of a motion for judicial review of the state public defender's action on an attorney fee claim, preparation for or attendance at a hearing on such a motion, review of an order granting or denying the motion, preparation of appellate briefs or other documents in an appeal of such a court order, preparation for or participation in oral arguments in the appeal, or review of an appellate decision regarding such a court order.

12.5(4) *Travel time.* Time spent by an attorney or guardian ad litem traveling is only payable when the travel is reasonable and necessary to represent the indigent client and the attorney or guardian ad litem is traveling:

a. To and from the scene of a crime in a criminal case or juvenile delinquency proceeding;

b. To and from the location of a pretrial hearing, trial, or posttrial hearing in a criminal case if the venue has been changed from the county in which the crime occurred or if the location of the court hearing has been changed, without changing venue, to a different county for the convenience of the court;

c. To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;

d. To and from the place of detention of a client in a juvenile delinquency or criminal case if the place of detention is located outside the county in which the action is pending;

e. To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;

f. To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute and court order to visit the placement and the placement is outside the state of Iowa;

g. To and from the location of a family team meeting, if the place of the meeting is located outside the county in which the action is pending and the court approves that the location of the meeting is appropriate;

h. To and from a court of appeals or supreme court argument;

i. To and from the location where the deposition of an expert witness is being taken; or

j. To other locations for which travel authorization is obtained from the state public defender.

12.5(5) *Substitute counsel time.* Work performed by substitute counsel on behalf of an attorney appointed as counsel or guardian ad litem is payable only as provided for under this subrule. The appointed attorney is at all times personally responsible for the representation of the client and must ensure that substitute counsel is qualified to perform the work directed and that the client is effectively represented at all times. The appointed attorney is responsible for compensating substitute counsel. Claims for payment directly by substitute counsel or claims for payment by the appointed attorney that are inconsistent with this subrule shall be denied.

a. Court time. An attorney appointed as counsel or guardian ad litem must handle all court appearances unless the appointed attorney has a scheduling conflict, an illness, or other personal emergency, in which case the matter may be covered by substitute counsel. Substitute counsel may never cover for oral arguments in appellate cases.

b. Out-of-court time. Substitute counsel may perform out-of-court legal services, except that time spent by substitute counsel that duplicates work performed by the appointed attorney and time spent receiving direction from or conferencing with the appointed attorney are not payable.

c. Exceptional circumstances. Substitute counsel may be used in situations that would otherwise be impermissible if the state public defender concludes that use of such substitute counsel would be in the best interest of the client and the administration of justice and provides prior written consent to the appointed attorney.

d. Supervisory time. Time spent by the appointed attorney directing, reviewing, or correcting the work of substitute counsel is not payable.

e. Qualification of substitute counsel. Unless the state public defender has given prior written consent to use the attorney as substitute counsel, substitute counsel must have an active contract with the state public defender to perform indigent defense services, although the contract need not cover the type of case or county of the case for which the claim is submitted.

f. Inapplicability to co-counsel in Class A felonies. The previous paragraphs of this subrule do not apply to a co-counsel who is separately appointed in a Class A felony. Each separately appointed co-counsel in a Class A felony shall submit a separate indigent defense fee claim that claims only the

work actually performed by the appointed attorney submitting the claim. The use of substitute counsel is not permissible in a Class A felony in which co-counsel has been separately appointed.
[**ARC 9293B**, IAB 12/29/10, effective 12/7/10; **ARC 9447B**, IAB 4/6/11, effective 5/11/11; **ARC 1512C**, IAB 6/25/14, effective 7/30/14; **ARC 2378C**, IAB 2/3/16, effective 3/9/16]

493—12.6(13B,815) Attorney fee limitations.

12.6(1) *Adult cases.* The state public defender establishes attorney fee limitations for combined attorney time and paralegal time for the following categories of adult cases:

Class A felonies	$18,000
Class B felonies	$3,600
Class C felonies	$1,800
Class D felonies	$1,200
Aggravated misdemeanors	$1,200
Serious misdemeanors	$600
Simple misdemeanors	$300
Simple misdemeanor appeals to district court	$300
Contempt/show cause proceedings	$300
Proceedings under Iowa Code chapter 229A	$10,000
Probation/parole violation	$300
Extradition	$300
Postconviction relief—the greater of $1,000 or one-half of the fee limitation for the conviction from which relief is sought.	

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815). If more than one charge is included within a case, the charge with the higher fee limitation will apply to the entire case.

For example, in an adult criminal proceeding, if an attorney were appointed to represent a client charged with four counts of forgery arising at four separate times, and if the client were charged in four separate trial informations, the fee limitations for each charge would apply separately. If all four charges were contained in one trial information, the fee limitation would be $1,200 even if there were more than one separate occurrence. If the attorney were appointed to represent a person charged with a drug offense and failure to possess a tax stamp, the fee limitation would be the limitation for the offense with the higher limitation, not the total of the limitations.

If the Iowa Code section listed on the claim form defines multiple levels of crimes and the claimant does not list the specific level of crime on the claim form, the state public defender will use the least serious level of crime in reviewing the claim.

For example, Iowa Code section 321J.2 defines crimes ranging from a serious misdemeanor to a Class D felony. If the attorney does not designate the subsection defining the level of the crime, the state public defender will deem the charge to be a serious misdemeanor.

12.6(2) *Juvenile cases.* The state public defender establishes attorney fee limitations for attorney time for the following categories of juvenile cases:

Delinquency (through disposition)	$1,200
Child in need of assistance (CINA) (through disposition)	$1,200
Termination of parental rights (TPR) (through disposition)	$1,800
Juvenile court review and other postdispositional court hearings	$300
Judicial bypass hearings	$180
Juvenile commitment hearings	$180
Juvenile petition on appeal	$600
Motion for further review after petition on appeal	$300

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is $1,200 for all four proceedings, not $1,200 for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to $1,200 for the child in need of assistance case and up to $1,800 for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the appointed trial attorney does not need to obtain a new appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

12.6(3) *Appellate cases.* Except as otherwise provided in this rule with respect to simple misdemeanor appeals to the district court and juvenile petitions on appeal, there is no fee limitation established for appellate cases. Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

12.6(4) *Claims in excess of fee limitations.* A claim in excess of the attorney fee limitations will not be paid unless the attorney seeks and obtains authorization from the appointing court to exceed the attorney fee limitations prior to exceeding the attorney fee limitations. If authorization is granted, payment in excess of the attorney fee limitations shall be made only for services performed after the date of submission of the request for authorization.

12.6(5) *Retroactivity of authorization.* Authorization to exceed the attorney fee limitations shall be effective only as to services performed after a request for authorization to exceed the attorney fee limitations is filed with the court unless the court enters an order before submission of the claim to the state public defender specifically authorizing a late filing of the application and finding that good cause exists excusing the attorney's failure to file the application prior to the attorney's exceeding the attorney fee limitations. "Good cause" as used in this subrule means a sound, effective and truthful reason. "Good cause" is more than an excuse, plea, apology, extenuation, or some justification. Inadvertence or oversight does not constitute good cause. Retroactive court orders entered after the date of the state public defender's action on a claim are void. See Iowa Code section 13B.4(4).

[**ARC 9293B**, IAB 12/29/10, effective 12/7/10; **ARC 9447B**, IAB 4/6/11, effective 5/11/11; **ARC 1512C**, IAB 6/25/14, effective 7/30/14]

493—12.7(13B,815) Reimbursement for specific expenses.

12.7(1) The state public defender shall reimburse the attorney for the payments made by the attorney for necessary certified shorthand reporters, investigators, foreign language interpreters, evaluations, and experts, if the following conditions are met:

a. The attorney obtained court approval for a certified shorthand reporter, investigator, foreign language interpreter, evaluation or expert prior to incurring any expenses with regard to each.

b. A copy of each of the following documents is attached to the claim:

(1) The application and court order authorizing the expenditure of funds at state expense for the certified shorthand reporter, investigator, foreign language interpreter, evaluation, or expert.

(2) If the expenses are for services of investigators, foreign language interpreters, or experts, a court order setting the maximum dollar amount of the claim. If the initial court order authorizing the expenditure sets the maximum amount of the claims, a subsequent order is unnecessary.

(3) An itemization detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) If the expenses are for foreign language interpreters, the court order and itemization required by subparagraphs 12.7(1)*"b"*(2) and (3) shall be submitted on the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services form promulgated by the judicial branch.

(5) If the expenses are for a certified shorthand reporter, any additional documentation required in 493—paragraph 13.2(4)*"b"* when applicable to the services provided.

(6) Documentation that the attorney has already paid the funds to the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert.

c. The expenses would be payable if the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or an expert submitted such claim directly pursuant to 493—Chapter 13, except for the requirement that the claim be submitted on the miscellaneous claim form promulgated by the state public defender.

d. The certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert does not submit a claim for the same services.

e. In claims for the cost of an evaluation requested by an appointed attorney, the attorney shall be reimbursed for the reasonable cost of an evaluation of the client to establish a defense in the case or to determine if the client is competent to stand trial. In either instance, a copy of the court order authorizing the evaluation for one of these specific purposes and an order approving the amount of the evaluation must accompany the claim form. Claims for the cost of an evaluation to be used for any other purpose, such as sentencing or placement, will not be reimbursed.

12.7(2) Nothing contained in this rule is intended to require the attorney to provide notice to any other party prior to seeking such an order or to require the attorney to disclose confidential information, work product, or trial strategy in order to obtain the order.

12.7(3) In an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, subrule 12.7(1) shall apply.

12.7(4) Claims for expenses that do not meet these conditions are not payable under the attorney's appointment and will be denied.

[**ARC 0137C**, IAB 5/30/12, effective 7/11/12]

493—12.8(13B,815) Reimbursement of other expenses.

12.8(1) The state public defender shall reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case to the extent that the expenses are reasonable and necessary:

a. Mileage for automobile travel at the rate of 39 cents per mile. The number of miles driven each day shall be separately itemized on the itemization of services, specifying the date of the travel, the origination and destination locations, the total number of miles traveled that day and, if it is not otherwise clear from the itemization, the purpose of the travel. If the travel is to perform services for multiple clients on the same trip, the mileage must be split proportionally between each client and the

itemization must note the manner in which the mileage is split. The total miles traveled for the case shall also be listed on the claim form. Other forms of transportation costs incurred by the attorney may be reimbursed only with prior approval from the state public defender.

b. The actual cost of lodging, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with the lodging and the attorney is required to be away from home overnight. An itemized receipt showing the expenses incurred must be attached to the claim form.

c. The actual cost of meals, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with these meals. An itemized receipt showing the expenses incurred must be attached to the claim form.

d. Necessary photocopying at the attorney's office at the rate of 10 cents per copy. The number of copies made each day must be separately itemized in the itemization of services. The total number of copies must also be listed on the claim form.

e. Ordinary and necessary postage, toll calls, collect calls, and parking for the actual cost of these expenses. Toll and collect calls will be reimbursed at 10 cents per minute or the actual cost. A receipt for the actual cost of the toll or collect call must be attached to the claim form. A statement from a correctional facility or jail detailing a standard rate for such calls shall constitute a receipt for purposes of this paragraph. For parking expenses in excess of $5, a receipt must be attached to the claim form. Claims for the cost of a parking ticket shall be denied. Unless a receipt is provided, any postage, toll calls, collect calls, or parking expenses shall be separately itemized on the itemization of services, specifying the date on which the expense was incurred and, if it is not otherwise clear from the itemization, the purpose of the expense.

f. Receiving faxes in the attorney's office at the rate of 10 cents per page. There is no direct cost reimbursement for sending a fax unless there is a toll charge associated with it. Any fax charges claimed shall be separately itemized on the itemization of services, specifying the date on which the expense was incurred and, if it is not otherwise clear from the itemization, the purpose of the expense.

g. The actual cost of photocopying or faxing for which the attorney must pay an outside vendor. A receipt for the actual cost must be attached to the claim form.

h. Other claims for expenses such as process service, medical records, DVDs, CDs, videotapes, and photographic printing will be reimbursed for the actual cost. A receipt or invoice from an outside vendor must be attached to the claim form.

i. Other specific expenses for which prior approval by the state public defender is obtained.

12.8(2) Claims for expenses other than those listed in this rule or at rates in excess of the rates set forth in this rule are not payable under the attorney's appointment and will be reduced or denied.

[**ARC 1512C**, IAB 6/25/14, effective 7/30/14; **ARC 2378C**, IAB 2/3/16, effective 3/9/16]

493—12.9(13B,815) Court review. An attorney whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

12.9(1) *Motions for court review.* Court review of the action of the state public defender is initiated by the filing of a motion with the trial court requesting the review. The following conditions shall apply to all such motions:

a. The motion must be filed with the court within 20 days of the action of the state public defender. This time limit is jurisdictional and will not be extended by the filing of another claim, submitting a letter or e-mail requesting reconsideration, or obtaining a court order affecting the amount of the claim.

b. The motion must set forth each and every ground on which the attorney intends to rely in challenging the action of the state public defender.

c. The motion must have attached to it a complete copy of the claim, together with the notice of action or returned fee claim letter that the attorney seeks to have reviewed.

d. A copy of all documents filed must be provided to the state public defender.

e. It is unnecessary for the state public defender to file any response to the motion.

12.9(2) *Hearings.* The following shall apply to hearings on motions for court review:

a. The motion shall be set for hearing by the court. Notice of the hearing on the attorney's request for review shall be provided to the attorney and the state public defender at least ten days prior to the date and time set by the reviewing court.

b. Unless the state public defender appears or specifically indicates an intention to appear in person at the hearing, the state public defender shall participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for the telephone call. If the attorney intends to participate by telephone, the attorney shall notify the state public defender of this intent and provide a telephone number for the hearing at least two business days prior to the date scheduled for the hearing.

c. The burden shall be on the attorney requesting the review.

d. The court shall consider only the issues raised in the attorney's motion.

e. The court shall issue a written ruling on the issues properly presented in the request for review.

f. If a ruling is entered modifying the state public defender's action on the claim, the attorney must file a new claim with the state public defender within 45 days of the date of the court's order modifying the state public defender's action on the claim. A copy of the court's ruling and the original claim form and supporting documents must be attached to the claim form. The "date of service" for such a claim is the date of the court's order.

12.9(3) *Failure to seek review.* Failure to seek court review within 20 days of the action of the state public defender will preclude court review of the state public defender's action.

12.9(4) *Other court orders.* Any court order entered after the state public defender has taken action on a claim that affects that claim is void unless the state public defender is first notified and given an opportunity to be heard.

[**ARC 1512C**, IAB 6/25/14, effective 7/30/14]

493—12.10(13B,815) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered by the attorney, by the state public defender, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment shall be paid by check. The check, made payable to the "Treasurer, State of Iowa," together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

[**ARC 0137C**, IAB 5/30/12, effective 7/11/12; **ARC 1512C**, IAB 6/25/14, effective 7/30/14]

These rules are intended to implement Iowa Code chapters 13B and 815.

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◊ Two or more ARCs

1 12/29/04 effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held 12/14/04.

LOTTERY AUTHORITY, IOWA[531]

[Created by 2003 Iowa Acts, Senate File 453, section 66]
[Prior to 9/17/03, see Lottery Division[705]]

CHAPTER 1
GENERAL OPERATION OF THE LOTTERY

CHAPTER 2
PURCHASING

CHAPTER 3
PROCEDURE FOR RULE MAKING

CHAPTER 12
LICENSING

CHAPTER 13
LICENSED RETAILERS

CHAPTER 14
MONITOR VENDING MACHINES

CHAPTER 20
COMPUTERIZED GAMES—GENERAL RULES

CHAPTER 21
DRAWINGS AND CONTESTS

CHAPTER 12
LICENSING

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 3]
[Prior to 9/17/03, see 705—Ch 2]

531—12.1(99G,252J) License eligibility criteria.

12.1(1) A person, partnership, unincorporated association, authority, or other business entity shall not be selected as a lottery retailer if the person or entity meets any of the following conditions:

a. Has been convicted of a criminal offense related to the security or integrity of the lottery in Iowa or any other jurisdiction.

b. Has been convicted of any illegal gambling activity, false statements, perjury, fraud, or a felony in Iowa or any other jurisdiction.

c. Has been found to have violated the provisions of Iowa Code Supplement chapter 99G, or any regulation, policy, or procedure of the lottery, unless either ten years have passed since the violation or the board finds the violation both minor and unintentional in nature.

d. Is a vendor or any employee or agent of any vendor doing business with the lottery.

e. Resides in the same household as an officer of the lottery.

f. If a natural person, is less than 18 years of age.

g. Does not demonstrate financial responsibility sufficient to adequately meet the requirements of the proposed enterprise.

h. Has not demonstrated that the applicant is the true owner of the business proposed to be licensed and that all persons holding at least a 10 percent ownership interest in the applicant's business have been disclosed.

i. Has knowingly made a false statement of material fact to the authority.

12.1(2) The applicant shall be current in filing all applicable tax returns to the state of Iowa and in payment of all taxes, interest, and penalties owed to the state of Iowa, excluding items under formal appeal pursuant to applicable statutes.

12.1(3) The lottery will deny a license to any applicant who is an individual if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code section 252J.2 and Iowa Code Supplement sections 99G.7(1), 99G.9(3), 99G.21(2), and 99G.24.

531—12.2(99G,252J) Factors relevant to license issuance. The lottery may issue a license to any applicant to act as a licensed retailer who meets the eligibility criteria established by Iowa Code Supplement chapter 99G and these rules. In exercising its licensing discretion, the lottery shall consider the following factors: the background and reputation of the applicant in the community for honesty and integrity; the financial responsibility and security of the person and business or activity; the type of business owned or operated by the applicant to ensure consonance with the dignity of the state, the general welfare of the people, and the operation and integrity of the lottery; the accessibility of the applicant's place of business or activity to the public; the sufficiency of existing licenses to serve the public convenience; the volume of expected sales; the accuracy of the information supplied in the application for a license; the applicant's indebtedness to the state of Iowa, local subdivisions of the state, or the United States government; if an individual, indebtedness owed for child support payments; and any other criteria or information relevant to determining if a license should be issued.

This rule is intended to implement Iowa Code section 252J.2 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.24(5).

531—12.3(99G) Applicant or person defined. For purposes of determining whether an applicant or person is eligible for a license, the term "applicant" or "person" shall include the owner of a sole proprietorship, all partners or participants in a partnership or joint venture, the officers of a fraternal organization, the officers and directors of a corporation, persons owning at least 10 percent or more of a

corporation, persons owning at least 10 percent or more of a limited liability company, the manager or managers of a limited liability company, and any legal entity applying for a license.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.24.

531—12.4(99G,252J) Lottery licenses.

12.4(1) The lottery has discretion to license a qualified applicant to sell any one of the following lottery products or any combination of the following products: instant tickets; pull-tab tickets; and computerized game tickets, if available. The lottery may require an applicant to sell one or more lottery products as a condition of selling any other lottery product. A lottery license authorizes the licensee to sell only the type of lottery products specified on the license.

12.4(2) Any eligible applicant may apply for a license to act as a retailer by first filing with the lottery an application form together with any supplements required. Supplements may include, but are not limited to, authorizations to investigate criminal history, financial records and financial resources, and authorizations to allow the lottery to conduct site surveys.

12.4(3) All lottery license applications must be accompanied by a nonrefundable fee of $25.

12.4(4) Retailers who are currently licensed may apply for a license modification to allow the sale of additional lottery products. A current retailer may be required to complete an additional application or application supplements.

12.4(5) The lottery may waive the payment of any license fee to facilitate an experimental program or a research project.

12.4(6) A limited number of retailers may be selected as licensees from applications received. The selection shall be made based on criteria designed to produce the maximum amount of net revenue and serve public convenience. The lottery may refuse to accept license applications for a period of time if the lottery determines that the number of existing licensees is adequate to market any lottery product.

12.4(7) The lottery will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold shall be considered denied for purposes of appeal. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 252J.2 and 252J.8 and Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.21(2), 99G.24, and 99G.30.

[**ARC 2781C**, IAB 10/26/16, effective 11/30/16]

531—12.5(99G) Transfer of licenses prohibited. Lottery licenses may not be transferred to any other person or entity and do not authorize the sale of lottery products at any location other than the licensed premises specified on the license.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), 99G.25, and 99G.30.

531—12.6(99G) Expiration of licenses. A license is valid until it expires, is terminated by a change of circumstances, is surrendered by the licensee, or is revoked by the lottery. A license that does not have an expiration date will continue indefinitely until surrendered, revoked, or terminated by a change in circumstances.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), and 99G.27.

531—12.7(99G,252J) Provisional licenses. The lottery may issue a provisional license to an applicant for a lottery license after receipt of a fully completed license application, the authorization for a complete personal background check, completion of a credit check, and completion of a preliminary background check. The provisional license shall expire at the time of issuance of the requested license or 90 days from the date the provisional license was issued, whichever occurs first, unless the provisional license is extended by the lottery.

Notwithstanding the foregoing, the lottery will deny a provisional license to any applicant who is an individual if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 252J.2 and 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), and 99G.27.

531—12.8(99G) Off-premises licenses. Any licensed retailer who has been issued a license or provisional license to sell tickets may apply for an off-premises license to sell tickets in locations other than that specified on the existing license. The lottery must specifically approve the geographical area in which sales are to be made and the types of locations at which off-premises sales are to be made prior to issuance of an off-premises license. Additional instructions and restrictions may be specified by the lottery to govern off-premises sales. An off-premises license shall expire at the time designated on the off-premises license. An off-premises license may be renewed at the lottery's discretion.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.30.

531—12.9(99G) Duplicate licenses. Upon the loss, mutilation, or destruction of any license issued by the lottery, application for a duplicate shall be made. A statement signed by the retailer which details the circumstances under which the license was lost, mutilated, or destroyed may be required by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.30.

531—12.10(99G) Reporting changes in circumstances of the retailer. Every change of business structure of a licensed business, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the lottery prior to the change. Substantial changes in the ownership of a licensed business must also be reported to the lottery prior to the change. A substantial change of ownership is defined as the transfer of 10 percent or more equity in the licensed business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the licensee shall submit a license application reflecting the change and any other documentation the lottery may require. All changes will be reviewed by the lottery to determine if the existing license should be continued.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.27(1).

531—12.11(99G) License not a vested right. The possession of a license issued by the lottery to any person to act as a retailer in any capacity is a privilege personal to that person and is not a legal right. The possession of a license issued by the lottery to any person to act as a retailer in any capacity does not automatically entitle that person to sell tickets or obtain materials for any particular game.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.21(2), and 99G.27.

531—12.12(99G,252J) Suspension or revocation of a license.

12.12(1) The lottery may suspend or revoke any license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for license application and issuance established by Iowa Code Supplement chapter 99G or these rules.

b. Violating any of the provisions of Iowa Code Supplement chapter 99G, these rules, or the license terms and conditions.

c. Failing to file any return or report or to keep records required by the lottery; failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments that are dishonored or electronic funds transfers that are not paid; fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

d. If public convenience is adequately served by other licensees.

e. Failing to sell a minimum number of tickets as established by the lottery.

f. A history of thefts or other forms of losses of tickets or revenue from the business.

g. Violating federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control.

h. Obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake.

i. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

j. Denying the lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted.

k. Failing to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license.

l. Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of an authorized lottery.

m. Failing to follow the instructions of the lottery for the conduct of any particular game or special event.

n. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

o. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

p. For a licensee who is an individual, when the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

q. Allowing activities on the licensed premises that could compromise the dignity of the state.

r. Failing to accurately or timely account or pay for lottery products, lottery games, revenues, or prizes as required by the lottery.

s. Filing for or being placed in bankruptcy or receivership.

t. Engaging in any conduct likely to result in injury to the property, revenue, or reputation of the lottery.

u. Making any material change, as determined in the sole discretion of the lottery, in any matter considered by the lottery in executing the contract with the retailer.

12.12(2) The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

12.12(3) If a retailer's license is suspended for more than 180 days from the effective date of the suspension, the lottery will revoke the retailer's license upon 15 days' notice served in conformance with 531—12.13(99G,252J).

12.12(4) Upon suspicion that a retailer has sold a ticket to an underage player, the lottery will investigate and provide a written warning to the retailer describing the report of the event and of the potential violation of Iowa Code section 99G.30(3). In the event a retailer sells a ticket to an underage player and the lottery can substantiate the claim, the lottery may suspend the retailer's license for 7 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a second time in a period of one year from the date of the first event, the lottery may suspend the retailer's

license for a period of 30 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a third time in a period of one year from the date of the first event as described in this rule, the retailer's license may be suspended for one year.

12.12(5) Upon revocation or suspension of a retailer's license of 30 days or longer, the retailer shall surrender to the lottery, by a date designated by the lottery, the license, lottery identification card, and all other lottery property. The lottery will settle the retailer's account as if the retailer had terminated its relationship with the lottery voluntarily.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.27, 99G.30(3), and 99G.35.
[**ARC 1462C**, IAB 5/14/14, effective 6/18/14]

531—12.13(99G,252J) Methods of service. The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

Notice of a license revocation or a suspension for the reasons described in 531—12.12(99G,252J) shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel. The notice shall set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. If requested by the licensee, a hearing on the suspension or revocation shall be held within 180 days or less after the notice has been served.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.24.

531—12.14(99G,252J) Licensee's obligation. Licensees and license applicants shall keep the lottery informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the lottery with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

531—12.15(99G,252J) Calculating the effective date. In the event a licensee or applicant files a timely district court action following service of a lottery notice pursuant to Iowa Code sections 252J.8 and 252J.9, the lottery shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the lottery to proceed. For purposes of determining the effective date of revocation or suspension, or denial of the issuance or renewal of a license, the lottery shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code sections 252J.8 and 252J.9 and Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

531—12.16(99G) Financial responsibility. The lottery shall use the following guidelines to determine financial responsibility for a retailer seeking a license to sell lottery products.

12.16(1) *Sole proprietorship.* The lottery will not require a bond from a sole proprietor if the account history for the applicant for the past two years discloses no more than four accounts past due and no accounts over 90 days past due.

12.16(2) *Partnership.* If the license applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule 12.16(1). If the credit history discloses that the requirements of subrule 12.16(1) are satisfied, the lottery will not require a bond.

12.16(3) *Fraternal or civic associations.* If the license applicant is a fraternal association, civic organization or other nonprofit entity, the applicant must meet the credit guidelines set forth in subrule

12.16(1). If the fraternal or civic association or other nonprofit entity has no credit history or the credit history is incomplete in the sole discretion of the lottery, then the officers of the fraternal or civic association or other nonprofit entity must meet the requirements of subrule 12.16(1). If the credit history discloses that the requirements of subrule 12.16(1) are satisfied, the lottery will not require a bond.

12.16(4) *Corporations and limited liability companies in existence two years or more if a credit risk appraisal is available through a financial and credit reporting entity.* If the license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application and a credit risk appraisal is available through a financial and credit reporting entity, the license applicant must meet all of the following financial responsibility guidelines:

a. The license applicant is paying 60 percent of its suppliers on time or within terms; and

b. The license applicant must have a credit risk appraisal provided by a financial and credit reporting entity that indicates the corporation's or limited liability company's financial condition is fair or better.

If the corporation or the limited liability company meets the guidelines described in this rule, the lottery will not require a bond from the license applicant.

12.16(5) *Corporations and limited liability companies in existence less than two years or if a credit risk appraisal is not available through a financial and credit reporting entity.* If a corporation has been in existence for less than two years from the date of the application or a credit risk appraisal is not available through a financial and credit reporting entity, the lottery will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years or a credit risk appraisal is not available through a financial and credit reporting entity, the lottery will review the credit history of the members of a limited liability company who have contributed 10 percent or more to the capital of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule 12.16(1). If the corporate officers or the members of the limited liability company meet the requirements set forth in subrule 12.16(1), the lottery will not require the corporation or the limited liability company to obtain a bond.

12.16(6) *Bonding requirements.* With respect to any license applicant whose credit history does not meet the guidelines described in subrules 12.16(1) through 12.16(5), the applicant will be required to obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amounts generally described herein. The amount of the bond will vary depending on the type of lottery products sold by the license applicant, the sales history of the retail location or the average volume of sales of lottery products at the location, or a combination of the above factors. The following minimum amounts will be required:

a. Sale of pull-tab tickets only, $500.

b. Sale of instant tickets with or without pull-tab tickets, $1,500.

c. Sale of on-line games with or without instant and pull-tab tickets, $2,500.

12.16(7) *Holding period for bond.* The lottery will hold the bond provided by license applicant for a minimum time period of one year. Thereafter, the lottery will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery will release the bond.

This rule is intended to implement Iowa Code Supplement sections 99G.7(1) and 99G.26.

531—12.17(99G) Monitor vending machine retailers. Unless specifically noted in 531—Chapter 14, the rules contained in this chapter do not apply to entities holding licenses pursuant to 531—Chapter 14.

This rule is intended to implement Iowa Code Supplement sections 99G.7(1) and 99G.26.

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CHAPTER 18
INSTANT TICKET GENERAL RULES

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 8]
[Prior to 11/30/88, Instant Game General Rules[705] Ch 8]
[Prior to 9/17/03, see 705—Ch 8]

531—18.1(99G) Authorization of instant ticket games. The lottery authority board authorizes the sale of instant tickets that meet the criteria set forth in this chapter.

This rule is intended to implement Iowa Code Supplement section 99G.9(3).

[**ARC 2781C**, IAB 10/26/16, effective 11/30/16]

531—18.2(99G) Definitions.

"Instant ticket" means a scratch ticket or an instaplay ticket as defined in this chapter.

"Instaplay ticket" means an instant ticket printed on lotto terminal paper with play symbols that are not concealed by a removable covering.

"Play symbols" means the numbers or symbols appearing under the removable covering on a scratch ticket or on the face of an instaplay ticket.

"Scratch ticket" as used in this chapter means an instant lottery ticket that is played by removing a rub-off covering on the ticket.

"Validation number" means the characters or numbers found on a ticket or ticket stub.

This rule is intended to implement Iowa Code Supplement sections 99G.3 and 99G.9(3).

[**ARC 2781C**, IAB 10/26/16, effective 11/30/16]

531—18.3(99G) Instant ticket price. The lottery shall specify the price of scratch tickets and instaplay tickets in the specific game rules for each game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

[**ARC 2781C**, IAB 10/26/16, effective 11/30/16]

531—18.4(99G) Method of play. Winners of a prize may be determined by such activities as locating, matching, or adding the play symbols on the tickets or by any other play action approved by the lottery. The exact method of designating a winning ticket shall be determined by the lottery and shall be set forth in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—18.5(99G) Prizes.

18.5(1) The number and amount of prizes shall be determined by the lottery and set forth in the specific game rules.

18.5(2) At the lottery's discretion, a scratch ticket game or an instaplay game may include a special prize event. The number of prizes and the amount of each prize in the prize event shall be determined by the lottery. The dates and times, as well as the procedures for conducting any elimination drawings or prize events, shall be determined by the lottery in the specific game rules. Finalists for prize events shall be selected in the manner stated in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

[**ARC 2781C**, IAB 10/26/16, effective 11/30/16]

531—18.6(99G) Annuity prizes. If a prize offered in a scratch game or an instaplay game is an annuity, the prize shall consist of an initial prize payment followed by yearly installments as described in the specific game rules. If the current cash value of an annuity prize attributable to a single ticket or entry is less than $100,000, the lottery may elect to pay the current cash value of the prize in one lump-sum payment.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

[**ARC 2781C**, IAB 10/26/16, effective 11/30/16]

531—18.7(99G) Disclosure of odds. The overall probability of purchasing a winning ticket shall be displayed on the Iowa lottery's Web site and in game literature made available by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.
[**ARC 1954C**, IAB 4/15/15, effective 5/20/15]

531—18.8(99G) Claiming prizes.

18.8(1) *Claim period.* Scratch ticket prizes must be claimed within 90 days of the announced end of the scratch game. Instaplay ticket prizes must be claimed within 90 days of the date of sale of the instaplay ticket.

18.8(2) *Prizes claimed at retailer.* The specific game rules shall specify prizes that shall be claimed from the retailer. To claim a prize from a retailer, the winner shall sign the back of the winning ticket and fill out a claim form if required by the specific game rules. If a retailer can verify the claim, the retailer shall pay the prize. If a retailer cannot verify the claim, the player shall submit the ticket and a completed claim form to the lottery. If the claim is validated by the lottery, a draft shall be forwarded to the player in payment of the amount due. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

18.8(3) *Prizes claimed at lottery.* The specific game rules shall specify prizes that may be claimed only from the lottery. To claim a prize from the lottery, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225. If the claim is validated by the lottery, the prize or a check, warrant, or draft shall be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

18.8(4) *Prizes in special events.* The specific game rules shall set forth the manner in which prizes won in special events or drawings may be claimed.

18.8(5) *Variation by specific game rules.* The specific game rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any scratch or instaplay game or special event.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.
[**ARC 1954C**, IAB 4/15/15, effective 5/20/15; **ARC 2781C**, IAB 10/26/16, effective 11/30/16]

531—18.9(99G) Ticket validation requirements.

18.9(1) To be a valid scratch ticket, a ticket must meet all of the following validation requirements. A ticket must:

a. Have been issued in an authorized manner as determined by the lottery.

b. Not be altered, unreadable, reconstructed or tampered with in any manner.

c. Not be counterfeit in whole or in part.

d. Not be stolen or appear on any list of omitted tickets on file with the lottery.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

f. Have play symbols and captions as described in the specific game rules. All symbols, numbers and codes must be present in their entirety, legible, right side up, and not reversed in any manner.

g. Have the appropriate bar code, pack-ticket number, retailer verification code and security code.

h. Have a validation number that appears on the lottery's official list of validation numbers of winning tickets. A ticket with that validation number shall not have been previously paid.

i. Pass all additional validation requirements stated in the specific game rules and any confidential validation requirements established by the lottery.

18.9(2) To be a valid instaplay ticket, a ticket must meet all of the following validation requirements. A ticket must:

a. Have been issued in an authorized manner as determined by the lottery.

b. Not be altered, unreadable, reconstructed or tampered with in any manner.

c. Not be counterfeit in whole or in part.

d. Not be stolen, canceled, or appear on any list of omitted or test tickets on file with the lottery.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

f. Have play symbols and captions as described in the specific game rules. All symbols, numbers and codes must be present in their entirety, legible, right side up, and not reversed in any manner.

g. The information on the ticket or share must correspond precisely with the lottery's computer record.

h. The ticket or share serial number must appear in its entirety, and correspond, using a computer validation file, to the winning game play or plays printed on the ticket or share.

i. A ticket or share shall be void unless the ticket or share is printed on a paper stock roll that was validly issued to and used, at the time of the play, by the retailer from whom the ticket or share was purchased.

j. Pass all additional validation requirements stated in the specific game rules and any confidential validation requirements established by the lottery.

18.9(3) Any ticket not passing all applicable validation requirements is invalid and is ineligible for any prize. The chief executive officer's determination that a ticket is invalid is final.

The chief executive officer, in the chief executive officer's sole discretion, may choose to pay an amount equal to the prize that would have been won on an invalid ticket if the lottery is able to determine the prize which would have been won by use of a symbol, number, color code, or other mechanism. The chief executive officer's decision as to whether to pay a player the sum equal to the prize on an invalid ticket is final.

If an invalid ticket is purchased by a player, the only responsibility or liability of the lottery shall be to replace the invalid ticket with an unplayed ticket from the same game or any other game or issue a refund of the sale price.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.
[**ARC 2781C**, IAB 10/26/16, effective 11/30/16]

531—18.10(99G) Official end of game. The lottery shall announce the official end of each scratch game and each instaplay game. Retailers may continue to sell tickets for each game up to the cutoff date specified by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.
[**ARC 2781C**, IAB 10/26/16, effective 11/30/16]

531—18.11(99G) Board approval of games. The lottery shall provide board members with a written description of each specific scratch game and each specific instaplay game. The chairperson or a quorum of the board may call a special meeting to review the instant game selection. The board shall not contest the selection of a scratch game or an instaplay game more than five days after receiving written notice of the selection.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.
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CHAPTER 19
PULL-TAB GENERAL RULES
[Prior to 9/17/03, see 705—Ch 11]

531—19.1(99G) Authorization of pull-tab games. The lottery authority board authorizes the lottery to sell pull-tab tickets which meet the criteria specified in this chapter.

This rule is intended to implement Iowa Code Supplement section 99G.9(3).

531—19.2(99G) Definitions. As used in this chapter the following definitions are applicable.

"Low-tier prizes" are prizes which are included in the guaranteed low-end prize structure of a pull-tab game.

"Pull-tab tickets" are instant lottery tickets that are played by opening tabs to reveal if a prize was won. "Pull-tab tickets" do not include "scratch tickets" that are played by removing a rub-off covering from the play area or instaplay tickets that are played using the play symbols printed on lotto terminal paper.

This rule is intended to implement Iowa Code Supplement sections 99G.3 and 99G.9(3).
[**ARC 2781C**, IAB 10/26/16, effective 11/30/16]

531—19.3(99G) Pull-tab ticket price. The lottery shall specify the price of pull-tab tickets in the specific game rules for each game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—19.4(99G) Method of play. Each pull-tab ticket shall have tabs under which play symbols shall appear. A winning ticket shall be determined by matching, aligning, adding, or locating symbols or numbers under the tabs.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—19.5(99G) Ticket validation requirements.

19.5(1) Winning tickets shall be validated by use of a symbol, number, or color-coded marking. A ticket is not valid if it fails to meet any of the following requirements. The ticket must:

a. Have been issued by the Iowa lottery authority in an authorized manner.

b. Not be altered, unreadable, reconstructed, or tampered with in any manner.

c. Not be counterfeit in whole or in part.

d. Not be stolen or appear on any list of omitted tickets on file with the lottery.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed in error.

f. Have the exact play symbols and captions specified in the specific game rules.

g. Pass all validation tests including confidential validation tests.

If a ticket is invalid when sold it is not eligible to receive any prize, and the purchaser's sole remedy is to submit the ticket to lottery headquarters to obtain a refund of the retail sale price. The lottery shall have no liability or responsibility for tickets invalidated after the time of sale.

The chief executive officer may, in the chief executive officer's sole discretion, choose to pay a sum equal to the prize on an invalid ticket if the lottery is able to determine the prize that would have been won on the invalid ticket by use of a symbol, number, color code or other mechanism. The chief executive officer's determinations that a ticket is valid or invalid, that a ticket was valid when sold and was subsequently invalidated, and whether a sum equal to the prize on an invalid ticket will be paid shall be final.

19.5(2) Reserved.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—19.6(99G) Prizes. The number and the amount of prizes shall be determined by the lottery and set forth by the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—19.7(99G) Disclosure of odds. The overall probability of purchasing a winning ticket shall be stated on the Iowa lottery's Web site and in game literature made available by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.
[**ARC 1954C**, IAB 4/15/15, effective 5/20/15]

531—19.8(99G) Claiming prizes.

19.8(1) *Claim period.* Prizes must be claimed within 90 days of the announced end of the pull-tab game.

19.8(2) *Prizes claimed at retailer.* The specific game rules shall specify prizes that shall be claimed from the retailer. To claim a prize from a retailer, the winner shall sign the back of the winning ticket and fill out a claim form if required by the specific game rules. If a retailer can verify the claim, the retailer shall pay the prize. If a retailer cannot verify the claim, the player shall submit the ticket and a completed claim form to the lottery. If the claim is validated by the lottery, a draft shall be forwarded to the player in payment of the amount due. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

19.8(3) *Prizes claimed at lottery.* The specific game rules shall specify prizes that may be claimed only from the lottery. To claim a prize from the lottery, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225. If the claim is validated by the lottery, the prize or a check, warrant, or draft shall be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

19.8(4) *Prizes in special events.* The specific game rules shall set forth the manner in which prizes won in special events or drawings may be claimed.

19.8(5) *Variation by specific game rules.* The specific game rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any pull-tab game or special event.

This rule is intended to implement Iowa Code sections 99G.9(3), 99G.21, and 99G.31.
[**ARC 1954C**, IAB 4/15/15, effective 5/20/15]

531—19.9(99G) Owner of ticket. Retailers shall pay prizes only to persons who present winning tickets. The person in physical possession of a pull-tab ticket shall be deemed to be the owner of the ticket who is entitled to prize payment regardless of any signature or other writing that may have been placed on the ticket after purchase.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—19.10(99G) Disputed claim. If a purchaser and a retailer cannot agree as to whether a prize should be paid on any ticket, the purchaser may submit the ticket to any lottery office. The chief executive officer's determination as to whether a prize shall be awarded is final.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—19.11(99G) Lottery logo. All pull-tab tickets sold by the Iowa lottery authority shall be conspicuously marked with the logo of the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—19.12(99G) End of game. The chief executive officer shall announce the end of any pull-tab game or games.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—19.13(99G) Board approval of game. After selection of a particular pull-tab game, the lottery shall provide board members with written notification that a particular game has been selected. The chairperson of the board or a quorum of the board may call a meeting to review the game selection. If

the lottery board does not disapprove of the game within five working days following receipt of notice that the game has been selected, the board may not later disapprove of the game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

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CHAPTER 20
COMPUTERIZED GAMES—GENERAL RULES

[Prior to 10/12/94, see 705—Chapters 9, 10, 12, 13, 14, 15]
[Prior to 9/17/03, see 705—Ch 13]

531—20.1(99G) Authorization of computerized lottery games. The lottery authority board authorizes the sale of computerized games to be played in compliance with the criteria set forth in this chapter.

This rule is intended to implement Iowa Code Supplement section 99G.9(3).

531—20.2(99G) Computerized lottery definitions. For the purposes of interpreting this chapter, the following definitions are applicable unless the context requires a different meaning.

"Central computer" or *"central computer system"* is a computer system designated to control, monitor, and communicate with the terminals and to record the transactions processed by the terminals.

"Drawing" means that process that is used to randomly select a winning combination for the game plays.

"Drawing machine" means a computer or other device that determines the outcome of the process of selection of winning and losing tickets or shares in a lottery.

"Easy pick" means the random selection by the computer terminal of a valid play for the game that was selected.

"Electronic ticket" or *"e-ticket"* means a lottery ticket or share for which an electronic visual facsimile on a computer is available from the lottery.

"Game" shall mean any computerized game conducted by the lottery.

"Game ticket" or *"ticket"* means a ticket or share produced by a terminal or manufacturing process that is the tangible evidence to prove participation in a game.

"Gaming machine" means a drawing machine that upon winning dispenses coins, currency, or a ticket, credit, or token that is redeemable for cash or a prize.

"Instant ticket vending machine" or *"ITVM"* means a vending machine or self-service kiosk that dispenses printed paper lottery tickets, with or without a scratch-off area.

"Lotto terminal" means a vending machine that prints and dispenses tickets or shares that will be determined to be winning or losing tickets or shares either by a predetermined pool drawing machine or by a drawing machine at some time subsequent to the dispensing of the tickets or shares.

"Monitor vending machine" means a vending machine that dispenses or prints and dispenses lottery tickets or shares that have been determined to be winning or losing tickets or shares by a predetermined pool drawing machine prior to the dispensing of the tickets or shares.

"On-line vending machine" means a vending machine that prints and dispenses lottery tickets or shares that have been determined to be winning or losing tickets or shares by a predetermined pool drawing machine prior to the dispensing of the tickets or shares.

"Panel" or *"game panel"* means that area of a play slip that contains marked squares that may be played.

"Play" or *"game plays"* means the selection of an appropriate number of available variables that constitutes a valid entry in the game or the purchase of a ticket or share with a sequentially generated variable appearing on the face of the ticket or share that constitutes a valid entry in a pool exhaustion game.

"Play slip" means a card used by the player in marking a player's game plays.

"Pool exhaustion game" means a game where a predetermined pool of plays is established.

"Predetermined pool drawing machine" means a computer or other device external to a lotto terminal, instant ticket vending machine, on-line vending machine, or monitor vending machine that predetermines winning and losing tickets or shares, assigns them to preprogrammed and prepackaged sequential electronic pool files and subsequently utilizes the files in production and distribution of electronic game cards and paper game tickets or shares produced in manufactured packs or through lotto terminals or vending machines.

"Retailer" means the person or entity licensed by the Iowa lottery to sell game plays.

"Specific game rules" means the rules promulgated by the lottery pursuant to Iowa Code Supplement section 99G.9(4) that contain the features of a particular computerized game or promotion.

"Terminal" means a device that is authorized by the lottery to function with a central computer system for the purpose of issuing, entering, receiving, and processing lottery transactions.

"Vending machine" means a lottery ticket or share dispensing machine either with a mechanical operating mechanism or with computer components that perform accounting functions and activate the ticket or share dispensing mechanism.

"Winning numbers" means the selection of an appropriate number of the variables, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket or share.

This rule is intended to implement Iowa Code Supplement sections 99G.3 and 99G.9(3).

[**ARC 2781C**, IAB 10/26/16, effective 11/30/16]

531—20.3(99G) Method of play. If required by the specific game rules, a player must select an appropriate number of the available game variables. A player may select each game variable by marking a play slip and submitting the play slip to a retailer or by verbally requesting "easy pick" from a retailer. Players may also purchase game plays from player-activated terminals by use of a touch screen if player-activated terminals are available. A drawing is held in which an appropriate number of the game variables are drawn on a random basis.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.4(99G) Cancellation by a player. A ticket or share may be canceled by returning the ticket or share to the selling retailer provided that the ticket or share is returned to the retailer the same day it was purchased in time to permit canceling to be fully completed prior to the closing time for that drawing. In the event that a ticket or share is canceled, the player will be entitled to a refund from the retailer equal to the purchase price of the ticket or share.

Cancellations will not be allowed in certain games as outlined in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.5(99G) Prizes and odds. The amount of prizes and the odds of winning shall be set forth in the specific game rules. Specific game rules may allow alternative prize structures.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.6(99G) Payment of annuity jackpot prizes. The lottery may offer cash prizes, annuitized installment prizes, and prizes with cash or annuity payment options available to the winners. If the jackpot prize or share of the jackpot prize will be paid as an annuity, it will consist of the initial payment followed by such number of yearly installments as may be provided in the specific game rules for the game unless the cash value of the annuity prize attributable to a single play is less than $100,000. If the cash value of the annuity prize attributable to a single play is under $100,000, the lottery may elect to pay the cash value of the prize in one lump-sum prize payment. This rule does not apply to multistate or other multijurisdictional lottery games. Provision for payment of prizes for multistate and other multijurisdictional games shall be outlined in the specific game rules for such games.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.7(99G) Unclaimed prizes. Unclaimed jackpot prizes, shares of the jackpot prize, and other lotto prizes do not increase a prize simultaneously won by any other player in the game. Unclaimed jackpot shares shall be added to future jackpot prize pools at times determined by the lottery. Other unclaimed prizes shall be added to future prize pools for any lottery game. This rule shall also apply to such games offered in Iowa, except as may otherwise be provided in the specific game rules of a multistate lottery or other multijurisdictional lottery with which the Iowa lottery may be affiliated.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.8(99G) Disclosure of odds. The overall probability of purchasing a winning ticket or share shall be stated on the Iowa lottery's Web site and in the game literature made available by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

[**ARC 1954C**, IAB 4/15/15, effective 5/20/15]

531—20.9(99G) Price. The price of a game play shall be outlined in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.10(99G) Changes for special promotions. The lottery may alter the price of the tickets or shares, features, or prizes of the game or drawings to accommodate special promotions. Alterations made by the lottery shall be contained in the specific rules for the promotion.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), and 99G.21.

531—20.11(99G) Ticket or share ownership and prize entitlement.

20.11(1) A ticket or share is owned by its physical possessor until a signature is placed on the back of a ticket in the area designated for signature. When a signature is placed on the back of the ticket or share in the designated space, the person whose signature appears in the designated space is the owner of the ticket or share and is entitled to any prize attributable to the ticket or share.

20.11(2) Notwithstanding any name or names submitted on a claim form, the lottery shall make payment to the person whose signature appears on the back of the ticket or share in the designated space. If the signatures of more than one person appear in that space, the lottery shall make payment to the person identified on the winner's claim form to receive payment, which designation shall be made by all persons whose signatures appear on the reverse side of the ticket or share. In the event that all persons whose signatures appear in the appropriate space cannot identify one person to whom payment should be made, the lottery may withhold payment until the proper payee is determined. In no event shall more than one person be entitled to a particular prize.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.12(99G) Ticket validation requirements.

20.12(1) All claims for prizes are subject to validation by the lottery. To be a valid ticket or share and eligible to receive a prize, all of the following requirements must be satisfied.

a. The ticket or share must have been issued by the lottery directly or through a retailer, via a terminal, in an authorized manner.

b. The information on the ticket or share must correspond precisely with the lottery's computer record.

c. The ticket or share serial number must appear in its entirety, and correspond, using a computer validation file, to the winning game play or plays printed on the ticket or share.

d. A ticket or share shall be void unless the ticket or share is printed on a paper stock roll that was validly issued to and used, at the time of the play, by the retailer from whom the ticket or share was purchased.

e. The ticket or share must not be produced in error, counterfeit in whole or in part, altered, mutilated, unreadable, tampered with in any manner, incomplete, blank or partially blank, miscut, or defective.

f. The ticket or share must pass all other security criteria determined by the lottery.

g. The ticket or share must not be stolen.

h. The ticket or share must not be canceled.

i. The ticket or share must pass additional validation requirements that may be stated in the specific game rules.

20.12(2) In the event that a ticket or share fails to pass all of the validation criteria set forth in this rule and the specific game rules, it is invalid and ineligible for any prize. The lottery, in its sole discretion, may choose to pay a sum equal to the prize on an invalid ticket or share if the lottery can determine the prize that would have been won by the ticket or share by use of a symbol, code number, color code, or other mechanism. The lottery's decisions as to whether a ticket or share is invalid and whether a sum

equal to the prize on an invalid ticket or share will be paid are final. If the lottery determines that a ticket or share is not eligible to receive a prize or a sum equivalent to the prize amount, the lottery may replace the invalid ticket or share with a ticket or share of equivalent sale price from any current lottery game or refund the purchase price of the ticket or share. Replacement of the ticket or share, or refund of the purchase price, shall be the claimant's sole and exclusive remedy.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.13(99G) Claim period. All prizes for games not associated with another state's lottery must be claimed as directed within 90 calendar days of the drawing in which the prize was won, unless otherwise specified in the specific game rules for the game. All prizes for games associated with another state's lottery must be claimed as directed within the specific game rules. For purposes of determining the claim period, the drawing date shall not be counted. If a prize is claimed by mail, the lottery must actually receive the ticket or share and claim form within the claim period. Any prize not properly claimed within the specified period shall be forfeited. The claim period for a game may be altered by the lottery in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.14(99G) Manner of claiming prizes.

20.14(1) To receive payment for a prize or prizes on any single game ticket or share that total $600 or less, the winner may take the signed ticket or share directly to any lottery retailer authorized to sell and validate the game, or to any lottery office, or mail the signed ticket or share, along with a completed claim form, to Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225.

If there is any alteration, mutilation, tear, or other ambiguity on the ticket or share, the retailer is not authorized to make direct payment of a prize and a claim form and the ticket or share must be submitted to the lottery.

20.14(2) To receive payment for a prize or prizes on any single game ticket or share that total more than $600, the winner may submit the signed ticket or share and a completed claim form directly to any lottery office. The winner may also mail the signed ticket or share and claim form to Iowa Lottery Authority, 13001 University Avenue, Clive, Iowa 50325-8225.

20.14(3) Claim forms are available at all computerized lottery retailers and lottery offices. The lottery or, at the lottery's direction, a lottery retailer may require the person claiming a prize of any amount to fill out a claim form.

20.14(4) If a prize is claimed by mail, the ticket or share and the claim form must actually be received by the lottery within the claim period.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.
[**ARC 1954C**, IAB 4/15/15, effective 5/20/15]

531—20.15(99G) Presentation of ticket. No prize payments shall be made unless the player submits a valid, uncanceled ticket or share. A play slip has no pecuniary or prize value and is not evidence of ticket purchase or of numbers selected.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.16(99G) One prize per game play. The holder of a winning ticket or share may win only one prize per game play in connection with the winning numbers drawn and shall be entitled only to the prize won by those numbers in the highest matching prize category.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.17(99G) Corrections. The lottery reserves the right to correct and adjust, up or down, the amount of any prize or prizes, whether all or part of the prize or prizes has been paid, if it is determined that one or more players are entitled to a portion of a prize and were not included in the prize calculations or were included in the prize calculations by mistake.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.18(99G) Risk of error. The placing of plays is done at the player's own risk. It is solely the player's responsibility to verify the accuracy of game plays and all other data printed on the ticket. In the event of any error, the player's only remedy is cancellation of the ticket or share according to the procedure specified in this chapter. The lottery and lottery retailers have no other responsibility for tickets or shares printed in error.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.19(99G) Multidraw plays and advance plays. Multidraw plays and advance plays may be available.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.20(99G) Drawings. Drawings will be held as specified in the game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.21(99G) Cancellation or delay of play. The lottery reserves the right to cancel or delay drawings or ticket or share sales in the event of technical difficulties, and on days of special importance or on days the drawings would be impractical or inappropriate.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.22(99G) Pool exhaustion game—method of play.

20.22(1) Players may purchase tickets or shares for a specific game. Each ticket or share sold for a pool exhaustion game will be generated separately. Tickets or shares shall be sold against the pool until the pool of plays is exhausted or until the game ends in accordance with the specific game rules.

20.22(2) Each ticket or share will bear a sequentially generated variable on the face of the ticket or share.

20.22(3) Drawings for the prizes for a specific game shall randomly select a winner or winners from the tickets or shares actually sold. The drawing method shall be described in the specific game rules.

20.22(4) Prizes shall be awarded as specified in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.23(99G) Prize insurance fund.

20.23(1) The lottery may provide that up to 10 percent of the funds designated for the jackpot prize level in the prize structure of the specific game rules for a game or that any prize funding not awarded by the conclusion of the relevant claim period for a fixed-prize game shall be transferred to a prize insurance fund.

20.23(2) The prize insurance fund may be used for any of the following purposes:

a. To pay prizes for any on-line game prize obligation if the amount available to fund an on-line game prize is insufficient;

b. To support a special promotion to retire an on-line game, e.g., a television show or a second chance drawing;

c. To transfer amounts to a successor game to pay prize obligations for a different on-line game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

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MASSAGE THERAPISTS

CHAPTER 131
LICENSURE OF MASSAGE THERAPISTS

[Prior to 6/26/02, see 645—130.4(152C) and 645—130.6(152C)]

645—131.1(152C) Definitions. For purposes of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"Board" means the Iowa board of massage therapy.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Licensee" means any person licensed to practice as a massage therapist in the state of Iowa.

"License expiration date" means the fifteenth day of the anniversary month every two years.

"Licensure by endorsement" means the issuance of an Iowa license to practice massage therapy to an applicant who is or has been licensed in another state.

"Massage therapy" means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, providing muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—131.14(17A,147,272C) by which an inactive license is restored to active status.

"Reciprocal license" means the issuance of an Iowa license to practice massage therapy to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of massage therapy to license persons who have the same or similar qualifications to those required in Iowa.

"Reinstatement" means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

645—131.2(152C) Requirements for licensure. All persons acting or serving in the capacity of a massage therapist shall hold a massage therapist's license issued by the board. The following criteria shall apply to licensure:

131.2(1) The applicant shall complete a board-approved application packet. Application forms may be obtained from the board's Web site (http://www.idph.state.ia.us/licensure) or directly from the board office. All applications shall be sent to Board of Massage Therapy, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

131.2(2) The applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

131.2(3) Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Massage Therapy. The fees are nonrefundable.

131.2(4) The applicant shall have official copies of academic transcripts sent directly from the board-approved school to the board of massage therapy. If a school has closed and is no longer operational, the board will accept an official transcript provided by the student.

131.2(5) The board may consider applications on a case-by-case basis which do not appear on their face to meet requirements if the requirements may be alternatively satisfied by demonstrated equivalency. The burden shall be on the applicant to document that the applicant's education and experience are substantially equivalent to the requirements which may be alternatively satisfied.

131.2(6) The applicant shall provide proof of passing any National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination or the Massage and Bodywork Licensing Examination (MBLEx). Proof of passing shall be sent directly from the testing service to the board of massage therapy. The applicant may submit a copy of the official notification from the testing service of the applicant's passing a board-approved examination. The copy of the applicant's official notification may be used by the board as proof of passage of a board-approved examination until the official proof of passage is received directly from the testing service. Submission of the applicant's copy of the official notification from the testing service shall not be allowed in lieu of the applicant's arranging for and the board's receiving the official record of proof of passage sent directly from the testing service. The examination score must be received from the testing service within 60 days of issuance of the license. The passing score on the written examination shall be the passing point criterion established by the national testing authority at the time the test was administered.

131.2(7) Licensees who were issued their licenses within six months prior to the renewal shall not be required to renew their licenses until the renewal month two years later.

131.2(8) Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed.

131.2(9) The applicant shall provide verification of license(s) from every state in which the applicant has been licensed as a massage therapist, sent directly from the state(s) to the board office.

[**ARC 2778C**, IAB 10/26/16, effective 11/30/16]

645—131.3(152C) Educational qualifications.

131.3(1) The applicant shall have graduated from a board-approved school that has a minimum of 500 hours of massage therapy education.

131.3(2) Foreign-trained massage therapists shall:

a. Provide an equivalency evaluation of their educational credentials by one of the following: International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone (310)258-9451, Web site www.ierf.org or E-mail at info@ierf.org; International Credentialing Associates, Inc., 7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo, FL 33777, telephone (727)549-8555. The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a massage therapy program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

645—131.4(152C) Examination requirements. The examination required by the board shall be the examination required pursuant to subrule 131.2(6).

131.4(1) The applicant shall apply to the National Certification Board for Therapeutic Massage and Bodywork.

131.4(2) Results of the examination are mailed directly from the examination service to the board of massage therapy after the applicant takes the examination.

[**ARC 2778C**, IAB 10/26/16, effective 11/30/16]

645—131.5(152C) Temporary licensure of a licensee from another state.

131.5(1) A temporary license may be issued to an applicant who holds a current license from another state with lower licensure requirements than those in Iowa. The applicant shall:

a. Submit to the board a completed application;

b. Pay the licensure fee;

c. Provide proof of passing any NCBTMB examination or the Massage and Bodywork Licensing Examination (MBLEx), to be sent directly from the testing service to the board office, if applicable;

d. Provide official verification of license(s) from every state in which the applicant has been licensed, to be sent directly from the state(s) to the board office;

e. Submit a plan for meeting the board's requirements for licensure within one year of the issuance of the temporary permit. Such plan shall include proof of enrollment in a school of massage therapy whose curriculum has been approved by the board, the date of enrollment, and the expected date of graduation.

131.5(2) A temporary license shall be valid for a period of up to one year and shall not be renewed.

131.5(3) The applicant shall be issued a permanent license upon receipt of a transcript of completion from a board-approved school sent directly from the school, and proof of passing any board-approved examination sent directly from the testing service to the board office.

131.5(4) There is no additional fee for converting a temporary license to a permanent license.

[**ARC 2778C**, IAB 10/26/16, effective 11/30/16]

645—131.6(152C) Licensure by endorsement. An applicant who has been a licensed massage therapist under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. Submits to the board a completed application;
2. Pays the licensure fee;
3. Shows evidence of licensure requirements that are similar to those required in Iowa;
4. Provides official copies of the academic transcripts sent directly from the school to the board;
5. Provides proof of passing any National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination. Proof of passing shall be sent directly from the testing service to the board of massage therapy. The passing score on the written examination shall be the passing point criterion established by the national testing authority at the time the test was administered; and
6. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- Licensee's name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license.

645—131.7(152C) Licensure by reciprocal agreement. Rescinded IAB 10/8/08, effective 11/12/08.

645—131.8(152C) License renewal.

131.8(1) The biennial license renewal period for a license to practice massage therapy shall begin on the sixteenth day of the anniversary month and end on the fifteenth day of the anniversary month two years later. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

131.8(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses.

131.8(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—133.2(152C) and the mandatory reporting requirements of subrule 131.8(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

131.8(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph *"e."*

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph *"e."*

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph *"e."*

Training may be completed through separate courses as identified in paragraphs *"a"* and *"b"* or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs *"a"* to *"c,"* including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 133.

f. The board may select licensees for audit of compliance with the requirements in paragraphs *"a"* to *"e."*

131.8(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

131.8(6) A person licensed to practice as a massage therapist shall keep the license certificate displayed in a conspicuous public place at the primary site of practice.

131.8(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 5.8(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

131.8(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a massage therapist in Iowa until the license is reactivated. A licensee who practices as a massage therapist in the state of Iowa with an inactive license may be subject to disciplinary

action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.
[**ARC 9430B**, IAB 3/23/11, effective 4/27/11; **ARC 2778C**, IAB 10/26/16, effective 11/30/16]

645—131.9(272C) Exemptions for inactive practitioners. Rescinded IAB 7/6/05, effective 8/10/05.

645—131.10(272C) Lapsed licenses. Rescinded IAB 7/6/05, effective 8/10/05.

645—131.11(147) Duplicate certificate or wallet card. Rescinded IAB 10/8/08, effective 11/12/08.

645—131.12(147) Reissued certificate or wallet card. Rescinded IAB 10/8/08, effective 11/12/08.

645—131.13(17A,147,272C) License denial. Rescinded IAB 10/8/08, effective 11/12/08.

645—131.14(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

131.14(1) Submit a reactivation application on a form provided by the board.

131.14(2) Pay the reactivation fee that is due as specified in 645—Chapter 5.

131.14(3) Provide verification of current competence to practice as a massage therapist by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 16 hours of continuing education within two years of application.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 16 hours of continuing education within two years of application; and

(3) Verification of passing one of the following examinations offered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or the Federation of State Massage Therapy Boards (FSMTB) within two years immediately prior to the submission of the completed reactivation application. If the applicant can provide proof of two years of active practice in another state as a licensed massage therapist, the applicant is not required to provide proof of passing one of these examinations. The two years of active practice must have occurred immediately prior to the submission of the completed reactivation application.

1. The National Certification Examination for Therapeutic Massage (NCETM); or
2. The National Certification Examination for Therapeutic Massage and Bodywork (NCETMB); or

3. The National Examination for States Licensing (NELS) option; or
4. The Massage and Bodywork Licensing Examination (MBLEx).

[**ARC 2778C**, IAB 10/26/16, effective 11/30/16]

645—131.15(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 131.14(17A,147,272C) prior to practicing as a massage therapist in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 152C and 272C.

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◊ Two or more ARCs

CHAPTER 133
CONTINUING EDUCATION FOR MASSAGE THERAPISTS
[Prior to 6/26/02, see 645—Ch 132]

645—133.1(152C) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

"Board" means the board of massage therapy.

"Continuing education" means planned, organized learning acts acquired during initial licensure designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hands-on training" means learning techniques that manipulate the soft tissue of the body.

"Hour of continuing education" means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

"License" means license to practice.

"Licensee" means any person licensed to practice as a massage therapist in the state of Iowa.

"Presenter" means person(s)/instructor(s) providing continuing education training.

645—133.2(152C) Continuing education requirements. Each biennium, each person who is licensed to practice as a massage therapist in this state shall be required to complete a minimum of 16 hours of continuing education. A biennium is a two-year period beginning with the date the license was granted.

133.2(1) The biennial continuing education compliance period shall run concurrently with each two-year renewal period. The renewal period begins on the date the initial license is granted and ends two years later on the day before the anniversary date of that initial license.

133.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal period may be used.

133.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity meeting the requirements of this chapter. These hours must be in accordance with these rules.

133.2(4) No hours of continuing education shall be carried over into the next renewal period. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

133.2(5) The cost of continuing education is the responsibility of each licensee.

[**ARC 2778C**, IAB 10/26/16, effective 11/30/16]

645—133.3(152C,272C) Continuing education criteria.

133.3(1) *General criteria.* A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance, including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course from the course sponsor.

133.3(2) *Specific criteria.* A licensee shall obtain a minimum of 16 hours of continuing education credit every two years. A minimum of 8 hours of the 16 hours must be hands-on training. A maximum of 8 hours of the 16 hours may be independent study. Licensees may obtain continuing education hours of credit by:

a. Attending workshops, conferences, or symposiums.

b. Accessing online training, such as viewing interactive conferences, attending webinars, or completing online training courses.

c. Teaching curriculum at a school of massage therapy or presenting professional continuing education programs that meet the criteria listed in this subrule. One hour of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit. A maximum of 4 hours may be awarded under this paragraph per biennium.

d. Completing academic courses that directly relate to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of massage therapy will be necessary in order for the licensee to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

1 academic clock hour = 1 continuing education hour of credit

e. Teaching in an approved college, university, or graduate school. The licensee may receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

f. Authoring research the results of which are published in a recognized professional publication. The licensee shall receive 5 hours of credit per page.

g. Taking courses directly beneficial to business practices necessary for operating a massage practice. Content areas include, but are not limited to, business management, financial management, accounting, tax preparation, marketing, human relations, communication skills, business ethics, and massage ethics.

h. Taking courses related to personal skills topics, such as career burnout, communication skills, human relations, and other like topics.

i. Completing programs which enhance a supplemental or complementary skill set directly related to promoting the public health while providing massage therapy. Content areas include, but are not limited to, CPR, first aid, mandatory reporter training, contraindication training, sanitation, and geriatric care.

j. Passing a board-approved national examination administered by the Federation of State Massage Therapy Boards or the National Certification Board for Therapeutic Massage Therapy and Bodywork within the biennial continuing education compliance period. A copy of the applicant's official notification may be used by the board as verification.

[**ARC 2778C**, IAB 10/26/16, effective 11/30/16]

645—133.4(152C,272C) Audit of continuing education report. Rescinded IAB 10/8/08, effective 11/12/08.

645—133.5(152C,272C) Automatic exemption. Rescinded IAB 10/8/08, effective 11/12/08.

645—133.6(152C,272C) Continuing education exemption for disability or illness. Rescinded IAB 10/8/08, effective 11/12/08.

645—133.7(152C,272C) Grounds for disciplinary action. Rescinded IAB 10/8/08, effective 11/12/08.

These rules are intended to implement Iowa Code chapters 21, 147, 152C and 272C.

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◊ Two or more ARCs

CHAPTER 80
PROPERTY TAX CREDITS AND EXEMPTIONS
[Prior to 12/17/86, Revenue Department[730]]

701—80.1(425) Homestead tax credit.

80.1(1) *Application for credit.*

a. No homestead tax credit shall be allowed unless the first application for homestead tax credit is signed by the owner of the property or the owner's qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year. (1946 O.A.G. 37) Once filed, the claim for credit is applicable to subsequent years and no further filing shall be required provided the homestead is owned and occupied by the claimant or the claimant's spouse on July 1 of each year and, in addition, the claimant or the claimant's spouse occupies the homestead for at least six months during each calendar year in which the fiscal year for which the credit is claimed begins. It is not a requirement that the six-month period of time be consecutive. If the credit is disallowed and the claimant failed to give written notice to the assessor that the claimant ceased to use the property as a homestead, a civil penalty equal to 5 percent of the amount of the disallowed credit shall be assessed against the claimant in addition to the amount of credit allowed. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 425.3. A claim filed after July 1 of any calendar year applies to the following assessment year.

b. In the event July 1 falls on either a Saturday or Sunday, applications for the homestead tax credit may be filed the following Monday.

c. In the event July 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

d. An assessor may not refuse to accept an application for homestead tax credit. If it is the opinion of the assessor that a homestead tax credit should not be allowed, the assessor shall accept the application for credit and recommend disallowance.

e. If the owner of the homestead is on active duty in the armed forces of this state or of the United States, or is 65 years of age or older or is disabled, the application for homestead tax credit may be signed and delivered by a member of the owner's family or the owner's guardian, conservator or designated attorney-in-fact. For purposes of this rule, any person related to the owner by blood, marriage or adoption shall be considered a member of the owner's family.

f. If a person makes a false application for credit with fraudulent intent to obtain the credit, the person is guilty of a fraudulent practice and the claim shall be disallowed. If the credit has been paid, the amount of the credit plus a penalty equal to 25 percent of the amount of the disallowed credit and interest shall be collected by the county treasurer.

g. For purposes of the homestead tax credit statute, the occupancy of the homestead may constitute actual occupancy or constructive occupancy. However, more than one homestead cannot be simultaneously occupied by the claimant and multiple simultaneous homestead tax credits are not allowable. (Op. St. Bd. Tax Rev. No. 212, February 29, 1980.) Generally, a homestead is occupied by the claimant if the premises constitute the claimant's usual place of abode. Once the claimant's occupancy of the homestead is established, such occupancy is not lost merely because the claimant, for some valid reason, is temporarily absent from the homestead premises with an intention of returning thereto (1952 O.A.G. 78).

80.1(2) *Eligibility for credit.*

a. If homestead property is owned jointly by persons who are not related or formerly related by blood, marriage or adoption, no homestead tax credit shall be allowed unless all the owners actually occupy the homestead property on July 1 of each year. (1944 O.A.G. 26; Letter O.A.G. October 18, 1941)

b. No homestead tax credit shall be allowed if the homestead property is owned or listed and assessed to a corporation, other than a family farm corporation, partnership, company or any other business or nonbusiness organization. (1938 O.A.G. 441; *Verne Deskin v. Briggs,* State Board of Tax Review, No. 24, February 1, 1972)

c. A person acquiring homestead property under a contract of purchase remains eligible for a homestead tax credit even though such person has assigned his or her equity in the homestead property as security for a loan. (1960 O.A.G 263)

d. A person occupying homestead property pursuant to Iowa Code chapter 499A or 499B is eligible for a homestead tax credit. (1978 O.A.G. 78-2-5; 1979 O.A.G. 79-12-2)

e. A person who has a life estate interest in homestead property shall be eligible for a homestead tax credit, provided the remainderman is related or formerly related to the life estate holder by blood, marriage or adoption or the reversionary interest is held by a nonprofit corporation organized under Iowa Code chapter 504A. (1938 O.A.G. 193)

f. A homestead tax credit may not be allowed upon a mobile home which is not assessed as real estate. (1962 O.A.G. 450)

g. A person occupying homestead property under a trust agreement is considered the owner of the property for purposes of the homestead tax credit. (1962 O.A.G. 434)

h. A remainder is not eligible to receive a homestead tax credit until expiration of the life estate to which such person has the remainder interest. (1938 O.A.G. 305)

i. In order for a person occupying homestead property under a contract of purchase to be eligible for a homestead tax credit, the contract of purchase must be recorded in the office of the county recorder where the property is located. A recorded memorandum or summary of the actual contract of purchase is not sufficient evidence of ownership to qualify a person for a homestead tax credit.

j. An owner of homestead property who is in the military service or confined in a nursing home, extended-care facility or hospital shall be considered as occupying the property during the period of service or confinement. The fact that the owner rents the property during the period of military service is immaterial to the granting of the homestead tax credit. (1942 O.A.G. 45) However, no homestead tax credit shall be allowed if the owner received a profit for the use of the property from another person while such owner is confined in a nursing home, extended-care facility or hospital.

k. A person owning a homestead dwelling located upon land owned by another person or entity is not eligible for a homestead tax credit. (1942 O.A.G. 160, O.A.G. 82-4-9) This rule is not applicable to a person owning a homestead dwelling pursuant to Iowa Code chapter 499B or a person owning a homestead dwelling on land owned by a community land trust pursuant to 42 U.S.C. Section 12773.

l. An heir occupying homestead property that is part of an estate in the process of administration is considered an owner of the property and is eligible for the homestead credit. (1938 O.A.G. 272)

80.1(3) *Disabled veteran's homestead tax credit.*

a. Qualification for credit. The disabled veteran tax credit may be claimed by any of the following owners of homestead property:

(1) A veteran who acquired homestead property under 38 U.S.C. Sections 21.801 and 21.802 or Sections 2101 and 2102.

(2) A veteran, as defined in Iowa Code section 35.1, with a permanent service-connected disability rating of 100 percent, as certified by the U.S. Department of Veterans Affairs, or a permanent and total disability rating based on individual unemployability that is compensated at the 100 percent disability rate, as certified by the U.S. Department of Veterans Affairs.

(3) A former member of the national guard of any state who otherwise meets the service requirements of Iowa Code section 35.1(2)*"b"*(2) or 35.1(2)*"b"*(7), with a permanent service-connected disability rating of 100 percent, as certified by the U.S. Department of Veterans Affairs, or a permanent and total disability rating based on individual unemployability that is compensated at the 100 percent disability rate, as certified by the U.S. Department of Veterans Affairs.

(4) An individual who is a surviving spouse or a child and who is receiving dependency and indemnity compensation pursuant to 38 U.S.C. Section 1301 et seq., as certified by the U.S. Department of Veterans Affairs.

b. Application for credit. Except for the 2014 assessment year, an application for the disabled veteran tax credit must be filed with the local assessor on or before July 1 of the assessment year. Any supporting documentation required by the assessor must be current within the previous 12 months of the date on which the application is filed. The filing deadline for applications for the 2014 assessment year

shall be July 1, 2015. The credit applicable to assessment year 2014 shall be allowed only on a homestead which the owner occupied on July 1, 2014, and for at least six months during the 2014 assessment year.

c. Amount of credit. The amount of the credit is equal to the entire amount of tax payable on the homestead.

d. Continuance of credit. The credit shall continue to the estate or surviving spouse and child who are the beneficiaries of an owner described in subparagraph 80.1(3)*"a"*(1), (2), or (3) if the surviving spouse remains unmarried. If an owner or beneficiary of an owner ceases to qualify for the credit, the owner or beneficiary must notify the assessor of the termination of eligibility.

80.1(4) *Application of credit.*

a. Except as provided in 80.1(1)*"a,"* if the homestead property is conveyed to another person prior to July 1 of any year, the new owner must file a claim for credit on or before July 1 to obtain the credit for that year. If the property is conveyed on or after July 1, the credit shall remain with the property for that year provided the previous owner was entitled to the credit. However, when the property is transferred as part of a distribution made pursuant to Iowa Code chapter 598 (Dissolution of Marriage) the transferee spouse retaining ownership and occupancy of the homestead is not required to refile for the credit.

b. A homestead tax credit may be allowed even though the property taxes levied against the homestead property have been suspended by the board of supervisors. (1938 O.A.G. 288)

c. A homestead tax credit shall not be allowed if the property taxes levied against the homestead property have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

d. Only one homestead tax credit can be allowed per legally described tract of land. For purposes of this rule, a legally described tract of land shall mean all land contained in a single legal description. (1962 O.A.G. 435)

e. If the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission,* 235 Iowa 222, 16 N.W.2d 215)

f. If the homestead property contains two dwelling houses and one of the dwelling houses and a portion of the land is sold after a valid application for homestead tax credit has been filed, the assessor shall prorate the assessment so as to allow the seller a homestead tax credit on that portion of the property which is retained and also allow the purchaser a homestead tax credit on that portion of the property which is purchased, provided the purchaser files a valid application for homestead tax credit by July 1 of the claim year.

g. A homestead tax credit shall be allowed against the assessed value of the land on which a dwelling house did not exist as of January 1 of the year in which the credit is claimed provided a dwelling house is owned and occupied by the claimant on July 1 of that year.

h. The county treasurer shall, pursuant to Iowa Code section 25B.7, be required to extend to the claimant only that portion of the credit estimated by the department to be funded by the state appropriation.

This rule is intended to implement Iowa Code chapter 425 as amended by 2006 Iowa Acts, House File 2794.

[**ARC 2507C**, IAB 4/27/16, effective 6/1/16]

701—80.2(22,35,426A) Military service tax exemption.

80.2(1) *Application for exemption.*

a. No military service tax exemption shall be allowed unless the first application for the military service tax exemption is signed by the owner of the property or the owner's qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year (1970 O.A.G. 437). Once filed, the claim for exemption is applicable to subsequent years and no further filing shall be required provided the claimant or the claimant's spouse owns the property on July 1 of each year. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 426A.14. A claim filed after July 1 of any calendar year applies to the following assessment year.

b. In the event July 1 falls on either a Saturday or Sunday, applications for the military service tax exemption may be filed the following Monday.

c. In the event July 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

d. An assessor may not refuse to accept an application for a military service tax exemption. If it is the opinion of the assessor that a military service tax exemption should not be allowed, the assessor shall accept the application for exemption and recommend disallowance.

e. If the owner of the property is on active duty in the armed forces of this state or of the United States, or is 65 years of age or older or is disabled, the application for military service tax exemption may be signed and delivered by a member of the owner's family or the owner's guardian, conservator or designated attorney-in-fact. For purposes of this rule, any person related to the owner by blood, marriage or adoption shall be considered a member of the owner's family.

80.2(2) *Eligibility for exemption.*

a. A person who was discharged from the draft is not considered a veteran of the military service and is not entitled to a military service tax exemption. (1942 O.A.G. 79)

b. A military service tax exemption shall not be allowed to a person whose only service in the military was with a foreign government. (1932 O.A.G. 242; 1942 O.A.G. 79)

c. Former members of the United States armed forces, including members of the Coast Guard, who were on active duty for less than 18 months must have served on active duty during one of the war or conflict time periods enumerated in Iowa Code Supplement section 35.1. If former members were on active duty for at least 18 months, it is not necessary that their service be performed during one of the war or conflict time periods. Former members who opted to serve five years in the reserve forces of the United States qualify if any portion of their enlistment would have occurred during the Korean Conflict (June 25, 1950, to January 31, 1955). There is no minimum number of days a former member of the armed forces of the United States must have served on active duty if the service was performed during one of the war or conflict time periods, nor is there a minimum number of days a former member of the armed forced of the United States must have served on active duty if the person was honorably discharged because of a service-related injury sustained while on active duty.

Former and current members of the Iowa national guard and reserve forces of the United States need not have performed any active duty if they served at least 20 years. Otherwise, they must have been activated for federal duty, for purposes other than training, for a minimum of 90 days. Also, it is not a requirement for a member of the Iowa national guard or a reservist to have performed service within a designated war or conflict time period.

d. With the exception of members of the Iowa national guard and members of the reserve forces of the United States who have served at least 20 years and continue to serve, a military service tax exemption shall not be allowed unless the veteran has received a complete and final separation from active duty service. (*Jones v. Iowa State Tax Commission,* 247 Iowa 530, 74 N.W.2d 563, 567-1956; *In re Douglas A. Coyle,* State Board of Tax Review, No. 197, August 14, 1979; 1976 O.A.G. 44)

e. As used in Iowa Code subsection 426A.12(3), the term minor child means a person less than 18 years of age or less than 21 years of age and enrolled as a full-time student at an educational institution.

f. A veteran of more than one qualifying war period is entitled to only one military service tax exemption, which shall be the greater of the two exemptions. (1946 O.A.G. 71)

g. The person claiming a military service tax exemption must be an Iowa resident. However, the veteran need not be an Iowa resident if such person's exemption is claimed by a qualified individual enumerated in Iowa Code section 426A.12. (1942 O.A.G. 140)

h. A person who has a life estate interest in property may claim a military service tax exemption on such property. (1946 O.A.G. 155; 1976 O.A.G. 125)

i. A remainder is not eligible to receive a military service tax exemption on property to which a remainder interest is held until expiration of the life estate. (1946 O.A.G. 155)

j. A military service tax exemption shall not be allowed on a mobile home which is not assessed as real estate. (1962 O.A.G. 450)

k. A divorced person may not claim the military service tax exemption of a former spouse who qualifies for the exemption. (Letter O.A.G. August 8, 1961)

l. A surviving spouse of a qualified veteran, upon remarriage, loses the right to claim the deceased veteran's military exemption as the surviving spouse is no longer an unremarried surviving spouse of the qualified veteran. (1950 O.A.G. 44)

m. An annulled marriage is considered to have never taken place and the parties to such a marriage are restored to their former status. Neither party to an annulled marriage can thereafter be considered a spouse or surviving spouse of the other party for purposes of receiving the military service tax exemption. (Op. Att'y. Gen. 61-8-10(L))

n. No military service tax exemption shall be allowed on property that is owned by a corporation, except for a family farm corporation where a shareholder occupies a homestead as defined in Iowa Code section 425.11(1), partnership, company or any other business or nonbusiness organization. (1938 O.A.G. 441)

o. In the event both a husband and wife are qualified veterans, they may each claim their military service tax exemption on their jointly owned property. (1946 O.A.G. 154) If property is solely owned by one spouse, the owner spouse may claim both exemptions on the property providing the nonowner spouse's exemption is not claimed on other property.

p. No military service tax exemption shall be allowed if on July 1 of the claim year, the claimant or the claimant's unremarried surviving spouse is no longer the owner of the property upon which the exemption was claimed.

q. A person shall not be denied a military service tax exemption even though the property upon which the exemption is claimed has been pledged to another person as security for a loan. (1960 O.A.G. 263)

r. A qualified veteran who has conveyed property to a trustee shall be eligible to receive a military service tax exemption on such property providing the trust agreement gives the claimant a beneficial interest in the property. (1962 O.A.G. 434)

s. A person owning property pursuant to Iowa Code chapter 499A or 499B is eligible for a military service tax exemption. (1978 O.A.G. 78-2-5; 1979 O.A.G. 79-12-2)

t. The person claiming the exemption shall have recorded in the office of the county recorder evidence of property ownership and either the military certificate of satisfactory service or, for a current member of the Iowa national guard or a member of the reserve forces of the United States, the veteran's retirement points accounting statement issued by the armed forces of the United States or the state adjutant general. The military certificate of satisfactory service shall be considered a confidential record pursuant to Iowa Code section 22.7.

u. An heir of property that is part of an estate in the process of administration is considered an owner of the property and is eligible for the military exemption.

80.2(3) *Application of exemption.*

a. When the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission,* 235 Iowa 222, 16 N.W.2d 215)

b. If a portion of the property upon which a valid military service tax exemption was claimed is sold on or before July 1 of the year in which the exemption is claimed, the seller shall be allowed a military service tax exemption on that portion of the property which is retained by the seller on July 1. The purchaser is also eligible to receive a military service tax exemption on that portion of the property which was purchased, provided the purchaser is qualified for the exemptions and files a valid application for the exemption on or before July 1 of the claim year.

c. A military service tax exemption may be allowed even though the taxes levied on the property upon which the exemption is claimed have been suspended by the board of supervisors. (1938 O.A.G. 288)

d. A military service tax exemption shall not be allowed if the taxes levied on the property upon which the exemption is claimed have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

e. The county treasurer shall, pursuant to Iowa Code section 25B.7, be required to extend to the claimant only that portion of the exemption estimated by the department to be funded by the state appropriation.

This rule is intended to implement Iowa Code sections 22.7, 35.1, and 35.2 and chapter 426A.
[**ARC 7726B**, IAB 4/22/09, effective 5/27/09]

701—80.3(427) Pollution control and recycling property tax exemption.

80.3(1) To secure an exemption for pollution control or recycling property, an application must be filed with the assessing authority on or before February 1 of the assessment year for which the exemption is first claimed. It is the responsibility of the taxpayer to secure the necessary certification from the department of natural resources in sufficient time to file the application for exemption with the assessing authority on or before February 1. An exemption for new pollution control or recycling property can be secured by filing an application with the assessing authority by February 1 of the assessment year following the year in which the property is installed or constructed. If no application is timely filed in that year, the property will first qualify for exemption in any subsequent year in which an application is filed with the assessing authority on or before February 1.

80.3(2) In the event February 1 falls on either a Saturday or Sunday, applications for the exemption may be filed the following Monday.

80.3(3) In the event February 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

80.3(4) No exemption shall be allowed unless the application is signed by the owner of the property or the owner's qualified designee.

80.3(5) An assessor may not refuse to accept an application for a pollution control exemption if timely filed and if the necessary certification has been obtained from the department of natural resources.

80.3(6) The sale, transfer, or lease of property does not affect its eligibility for exemption as long as the requirements of Iowa Code subsection 427.1(19) and rule 701—80.3(427), Iowa Administrative Code, are satisfied.

80.3(7) No exemption shall be allowed unless the department of natural resources has certified that the primary use of the property for which the taxpayer is seeking an exemption is to control or abate air or water pollution or to enhance the quality of any air or water in this state or that the primary use of the property is for recycling. Recycling property is property used primarily in the manufacturing process and resulting directly in the conversion of waste glass, waste plastic, wastepaper products, waste paperboard, or waste wood products into new raw materials or products composed primarily of recycled material.

80.3(8) In the event that qualified property is assessed as a unit with other property not having a pollution control or recycling function, the exemption shall be limited to the increase in the assessed valuation of the unit which is attributable to the pollution control or recycling property.

EXAMPLE

Valuation of unit with pollution control or recycling property	$100,000
Valuation of unit without pollution control or recycling property	50,000
Allowable amount of exemption	$ 50,000

80.3(9) The value of property to be exempt from taxation shall be the fair and reasonable market value of such property as of January 1 of each year for which the exemption is claimed, rather than the original cost of such property.

80.3(10) An assessor shall not exempt property from taxation without first assessing the property for taxation and subsequently receiving an application for tax exemption from the taxpayer.

This rule is intended to implement Iowa Code Supplement section 427.1(19) as amended by 2006 Iowa Acts, House File 2633, and Iowa Code sections 427.1(18) and 441.21(1)(i).
[**ARC 7726B**, IAB 4/22/09, effective 5/27/09]

701—80.4(427) Low-rent housing for the elderly and persons with disabilities.

80.4(1) As used in Iowa Code subsection 427.1(21), the term "nonprofit organization" means an organization, no part of the net income of which is distributable to its members, directors or officers.

80.4(2) As used in Iowa Code subsection 427.1(21), the term "low-rent housing" means housing the rent for which is less than that being received or which could be received for similar properties on the open market in the same assessing jurisdiction. Federal rent subsidies received by the occupant shall be excluded in determining whether the rental fee charged meets this definition.

80.4(3) As used in Iowa Code subsection 427.1(21), the term "elderly" means any person at least 62 years of age.

80.4(4) As used in Iowa Code subsection 427.1(21), the term "persons with physical or mental disabilities" means a person whose physical or mental condition is such that the person is unable to engage in substantial gainful employment.

80.4(5) The exemption granted in Iowa Code subsection 427.1(21) extends only to property which is owned and operated, or controlled, by a nonprofit organization recognized as such by the Internal Revenue Service. Property owned and operated, or controlled, by a private person is not eligible for exemption under Iowa Code subsection 427.1(21).

80.4(6) The income of persons living in housing eligible for exemption under Iowa Code subsection 427.1(21) shall not be considered in determining the property's taxable status.

80.4(7) An organization seeking an exemption under Iowa Code subsection 427.1(21) shall file a statement with the local assessor pursuant to Iowa Code subsection 427.1(14).

80.4(8) The exemption authorized by Iowa Code subsection 427.1(21) extends only until the final payment due date of the borrower's original low-rent housing development mortgage on the property or until the borrower's original low-rent housing development mortgage is paid in full or expires, whichever is sooner. If the original mortgage is refinanced, the exemption shall apply only until what would have been the final payment due date under the original mortgage or until the refinanced mortgage is paid in full or expires, whichever is sooner. This exemption for refinanced projects applies to those projects refinanced on or after January 1, 2005.

80.4(9) In complying with the requirements of Iowa Code subsection 427.1(14), the provisions of rule 701—78.4(427) shall apply.

80.4(10) In determining the taxable status of property for which an exemption is claimed under Iowa Code subsection 427.1(21), the appropriate assessor shall follow rules 701—78.1(427,441) to 701—78.5(427).

80.4(11) If a portion of a structure is used to provide low-rent housing units to elderly persons and persons with disabilities and the other portion is used to provide housing to persons who are not elderly or disabled, the exemption for the property on which the structure is located shall be limited to that portion of the structure used to provide housing to the elderly and disabled. Vacant units and projects under construction that are designated for use to provide housing to elderly and disabled persons shall be considered as being used to provide housing to elderly and disabled persons. The valuation exempted shall bear the same relationship to the total value of the property as the area of the structure used to provide low-rent housing for the elderly and persons with disabilities bears to the total area of the structure unless a better method for determining the exempt valuation is available. The valuation of the land shall be exempted in the same proportion.

80.4(12) The property tax exemption provided in Iowa Code subsection 427.1(21) shall be based upon occupancy by elderly or persons with disabilities as of July 1 of the assessment year. However,

nothing in this subrule shall prevent the taxation of such property in accordance with the provisions of Iowa Code section 427.19.

This rule is intended to implement Iowa Code section 427.1(14) and Supplement section 427.1(21).
[**ARC 7726B**, IAB 4/22/09, effective 5/27/09]

701—80.5(427) Speculative shell buildings.

80.5(1) *Authority of city council and board of supervisors.* A city council or county board of supervisors may enact an ordinance granting property tax exemptions for value added as a result of new construction of speculative shell buildings or additions to existing buildings or structures, or may exempt the value of an existing building or structure being reconstructed or renovated and the value of the land on which the building or structure is located, if the reconstruction or renovation constitutes complete replacement or refitting of an existing building or structure owned by community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499A, or for-profit entities. See Iowa Code Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419, for definitions. The value added exemption for new construction includes reconstruction and renovation constituting complete replacement or refitting of existing buildings and structures if the reconstruction or renovation is required due to economic obsolescence, or to implement industry standards in order to competitively manufacture or process products, or to market a building or structure as a speculative shell building. The exemption for reconstruction or renovation not constituting new construction does not have to meet these requirements but has to meet only the requirements set forth in the definition of a speculative shell building. The council or board in the ordinance authorizing the exemption shall specify if the exemption will be allowed to community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499B, or for-profit entities, and the length of time the exemption is to be allowed.

80.5(2) *Eligibility for exemption.* The value added by new construction, reconstruction, or renovation and first assessed prior to January 1 of the calendar year in which an ordinance authorizing a tax exemption becomes effective is not eligible for exemption. However, the value added as of January 1 of the calendar year in which the ordinance becomes effective is eligible for exemption if the ordinance is in effect on February 1 of that calendar year. This subrule does not apply to new construction projects having received prior approval. For reconstruction and renovation projects not constituting new construction, the ordinance authorizing the exemption must be in effect by February 1 of the year the project commences for the exemption to be allowable in the subsequent assessment year.

80.5(3) *Application for exemption.*

a. A community development organization, not-for-profit cooperative association, or for-profit entity must file an application for exemption with the assessor between January 1 and February 1, inclusive, of the year in which the value added for new construction is first assessed for the exemption to be allowable for that assessment year. For reconstruction and renovation projects not constituting new construction, an application for exemption must be filed by February 1 of the assessment year in which the project commences for the exemption to be allowable the following assessment year. If approved, no application for exemption is required to be filed in subsequent years for the value added exemption or the reconstruction or renovation exemption not constituting new construction. An application cannot be filed if a valid ordinance has not been enacted. If an application is not filed by February 1 of the year in which the value added for new construction is first assessed, the organization, association, or entity cannot receive, in subsequent years, the exemption for that value added. However, if the organization, association, or entity has received prior approval, the application must be filed by February 1 of the year in which the total value added for the new construction is first assessed.

b. If February 1 falls on either a Saturday or Sunday, applications for exemption may be filed the following Monday.

c. Applications submitted by mail must be accepted if postmarked on or before February 1 or, if February 1 falls on either a Saturday or Sunday, a postmark date of the following Monday is acceptable.

80.5(4) *Prior approval.* To obtain prior approval for a project, the proposal of the organization, association, or entity must be approved by a specific ordinance addressing the proposal and passed by

the city council or board of supervisors. The original ordinance providing for the exemption does not constitute the granting of prior approval for a project. If an organization, association, or entity has obtained a prior approval ordinance from a city council or board of supervisors, the exemption for new construction cannot be obtained until the year in which all value added for the completed project is first assessed. Reconstruction and renovation projects constituting new construction must receive prior approval to qualify for exemption. Reconstruction and renovation projects that do not constitute new construction need not receive prior approval.

80.5(5) *Termination of exemption.* The exemption continues until the property is leased or sold, the time period for the exemption specified in the ordinance elapses, or the exemption is terminated by ordinance of the city council or board of supervisors. If the ordinance authorizing the exemption is repealed, all existing exemptions continue until their expiration and any projects having received prior approval for exemption for new construction are to be granted an exemption upon completion of the project. If the shell building or any portion of the shell building is leased or sold, the exemption for new construction shall not be allowed on that portion of the shell building leased or sold in subsequent years. If the shell building or any portion of the shell building is leased or sold, the exemption for reconstruction or renovation not constituting new construction shall not be allowed on that portion of the shell building leased or sold and a proportionate share of the land on which the shell building is located in subsequent years.

This rule is intended to implement Iowa Code Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419.

701—80.6(427B) Industrial property tax exemption.

80.6(1) *Authority of city council and board of supervisors.* A partial exemption ordinance enacted pursuant to Iowa Code section 427B.1 shall be available to all qualifying property. A city council or county board of supervisors does not have the authority to enact an ordinance granting a partial exemption to only certain qualifying properties (1980 O.A.G. 639). As used in this rule, the term "qualifying property" means property classified and assessed as real estate pursuant to 701—subrule 71.1(6), warehouses and distribution centers, research service facilities, and owner-operated cattle facilities. "Warehouse" means a building or structure used as a public warehouse for the storage of goods pursuant to Iowa Code sections 554.7101 to 554.7603, except that it does not mean a building or structure used primarily to store raw agricultural products or from which goods are sold at retail. "Distribution center" means a building or structure used primarily for the storage of goods which are intended for subsequent shipment to retail outlets. Distribution center does not mean a building or structure used primarily to store raw agricultural products, used primarily by a manufacturer to store goods to be used in the manufacturing process, used primarily for the storage of petroleum products, or used for the retail sale of goods. A "research service facility" is one or more buildings devoted primarily to research and development activities or corporate research services. Research and development activities include, but are not limited to, the design and production or manufacture of prototype products for experimental use. A research service facility does not have as its primary purpose the providing of on-site services to the public. "Owner-operated cattle facility" means a building or structure used primarily in the raising of cattle and which is operated by the person owning the facility.

80.6(2) *Prior approval.* Only upon enactment of a partial property tax exemption ordinance in accordance with Iowa Code section 427B.1 may a city council or board of supervisors enact a prior approval ordinance for pending individual projects in accordance with Iowa Code section 427B.4. To obtain prior approval for a project, a property owner's proposal must be approved by a specific ordinance addressing the proposal and passed by the city council or board of supervisors. The original ordinance providing for the partial exemption does not constitute the granting of prior approval for a project. Also, prior approval for a project can only be granted by ordinance of the city council or board of supervisors; an official or representative of a city or county does not have the independent authority to grant prior approval for a project. If a taxpayer has obtained a prior approval ordinance from a city council or board of supervisors, the partial exemption cannot be obtained until the year in which all value added for the project is first assessed. (1980 O.A.G. 639)

80.6(3) *Repeal of ordinance.* A new construction project having received prior approval for exemption in accordance with subrule 80.6(2) shall be granted such exemption upon completion of the project even if the city council or board of supervisors subsequently repeals the ordinance passed in accordance with Iowa Code section 427B.1. (1980 O.A.G. 639)

80.6(4) *Annexation of property previously granted exemption.* A partial property tax exemption which has been granted and is in existence shall not be discontinued or disallowed in the event that the property upon which such exemption has been previously granted is located in an area which is subsequently annexed by a city or becomes subject to the jurisdiction of a county in which an ordinance has not been passed by the city council or county board of supervisors allowing such exemptions within that jurisdiction. The existing exemption shall continue until its expiration.

80.6(5) *Eligibility for exemption.*

a. The value added by new construction or reconstruction and first assessed prior to January 1 of the calendar year in which an ordinance authorizing a partial property tax exemption becomes effective, and new machinery and equipment assessed as real estate acquired and utilized prior to January 1 of the calendar year in which the ordinance or resolution becomes effective, are not eligible for exemption. However, the value added as of January 1 of the calendar year in which the ordinance becomes effective is eligible for exemption if the ordinance is in effect prior to February 1 of that calendar year and if all other eligibility and application requirements are satisfied.

EXAMPLE 1: A $1,000,000 new construction project on qualifying property is begun in July 1984. $500,000 in value of the partially completed project is completed in 1984 and first assessed as of January 1, 1985. The project is completed in 1985 adding an additional value of $500,000 which is first assessed as of January 1, 1986, bringing the total assessed value of the completed project to $1,000,000 as of the January 1, 1986, assessment.

A city ordinance authorizing the partial exemption program is passed and becomes effective January 15, 1987. This project is not eligible for a property tax exemption for any value added as a result of the new construction project.

EXAMPLE 2: Assuming the same factual situation as in Example 1, except that the ordinance authorizing the partial exemption program becomes effective on January 15, 1986, the $500,000 in assessed value added as of the January 1, 1986, assessment is eligible for the partial exemption if an application is filed with the assessor between January 1 and February 1, 1986, inclusive.

EXAMPLE 3: Assuming the same factual situation as in Example 1, except that the ordinance authorizing the partial exemption program becomes effective on February 15, 1986. Since the statutory application filing deadline is February 1, no value added and first assessed as of January 1, 1986, is eligible for a partial exemption. The project in this example would receive no exemption for any value added as a result of the new construction.

This subrule does not apply to new construction projects having received prior approval in accordance with subrule 80.6(2).

b. New machinery and equipment assessed as real estate shall be eligible for partial exemption only if used primarily in the manufacturing process. For example, computer equipment used primarily to maintain payroll records would not be eligible for exemption, whereas computer equipment utilized primarily to control or monitor actual product assembly would be eligible.

c. If any other property tax exemption is granted for the same assessment year for all or any of the property which has been granted a partial exemption, the partial property tax exemption shall be disallowed for the year in which the other exemption is actually received.

d. Only qualifying property is eligible to receive the partial property tax exemption (O.A.G. 81-2-18).

e. A taxpayer cannot receive the partial property tax exemption for industrial machinery or equipment if the machinery or equipment was previously assessed in the state of Iowa. Industrial machinery and equipment previously used in another state may qualify for the partial exemption if all criteria for receiving the partial exemption are satisfied.

f. Industrial machinery and equipment is eligible to receive the partial property tax exemption if it changes the existing operational status other than by merely maintaining or expanding the existing

operational status. This rule applies whether the machinery and equipment is placed in a new building, an existing building, or a reconstructed building. If new machinery is used to produce an existing product more efficiently or to produce merely a more advanced version of the existing product, the existing operational status would only be maintained or expanded and the machinery would not be eligible for the exemption. However, if the new machinery produces a product distinctly different from that currently produced, the existing operational status has been changed.

80.6(6) *Application for exemption.*

a. An eligible property owner shall file an application for exemption with the assessor between January 1 and February 1, inclusive, of the year for which the value added is first assessed for tax purposes. The amount of "actual value added" shall be the difference between the assessed value of the property on January 1 of the year value is added to the property and the assessed value of the property the following assessment year. An application cannot be filed if a valid ordinance has not been enacted in accordance with Iowa Code section 427B.1 (O.A.G. 82-3-5). If an application is not filed by February 1 of the year for which the value added is first assessed, the taxpayer cannot receive in subsequent years the partial exemption for that value added (O.A.G. 82-1-17). However, if a taxpayer has received prior approval in accordance with Iowa Code section 427B.4 and subrule 80.6(2), the application is to be filed by not later than February 1 of the year for which the total value added is first assessed as the approved completed project.

b. In the event that February 1 falls on either a Saturday or Sunday, applications for the industrial property tax exemption may be filed the following Monday.

c. Applications submitted by mail shall be accepted if postmarked on or before February 1, or in the event that February 1 falls on either a Saturday or Sunday, a postmark date of the following Monday shall be accepted.

80.6(7) *Change in use of property.* If property ceases to be used as qualifying property, no partial exemption shall be allowed as of January 1 of the year following the calendar year in which the change in use takes place or for subsequent years. If property under construction ceases to be constructed for use as qualifying property, no partial exemption shall be allowed as of January 1 of the year following the calendar year in which this cessation occurs. However, such a change in the use of the property does not affect the validity of any partial exemption received for the property while it was used or under construction as qualifying property.

This rule is intended to implement Iowa Code sections 427B.1 to 427B.7.

[**ARC 7726B**, IAB 4/22/09, effective 5/27/09]

701—80.7(427B) Assessment of computers and industrial machinery and equipment.

80.7(1) Computers and industrial machinery and equipment are to be assessed at 30 percent of the property's net acquisition cost through the 1998 assessment year, 22 percent of the net acquisition cost in the 1999 assessment year, 14 percent of the net acquisition cost in the 2000 assessment year, and 6 percent of the net acquisition cost in the 2001 assessment year. The property will be exempt from tax beginning with the 2002 assessment year.

Computers and industrial machinery and equipment acquired after December 31, 1993, and not previously assessed in Iowa, are exempt from tax.

Computers and industrial machinery and equipment assessed pursuant to Iowa Code section 427B.17 are not eligible to receive the partial property tax exemption under Iowa Code sections 427B.1 to 427B.7.

80.7(2) Computers assessed under Iowa Code section 427A.1(1)*"j"* are limited to the percent of the computer's net acquisition cost as provided in Iowa Code section 427B.17 regardless of the classification of the real estate in which the computer is located.

80.7(3) For computers and industrial machinery and equipment, the net acquisition cost shall be the acquired cost of the property.

80.7(4) Computation of taxpayer's value. Assume a machine is acquired at a net acquisition cost of $10,000. Assume also that the actual depreciated value of the machine is $9,000. The value on which taxes would be levied would be limited to $3,000 ($10,000 × .30). This percent will change over the course of the phaseout of the tax.

80.7(5) If all or a portion of the value of property assessed pursuant to Iowa Code section 427B.17 is eligible to receive an exemption from taxation, the amount of value to be exempt shall be subtracted from the net acquisition cost of the property before the taxpayer's value prescribed in Iowa Code section 427B.17 is determined. For example, if property has a net acquisition cost of $30,000 and is eligible to receive a pollution exemption for $15,000 of value, the taxable net acquisition cost would be $15,000 and the taxpayer's value would be $4,500 ($15,000 × .30). This percent will change over the course of the phaseout of the tax.

80.7(6) In the event the actual depreciated fair market value of property assessed pursuant to Iowa Code section 427B.17 is less than the valuation determined as a percent of the net acquisition cost of the property as provided in Iowa Code section 427B.17, the taxpayer's assessed value would be equal to the actual depreciated fair market value of the property.

80.7(7) Property ineligible for phaseout and exemption. Computers and industrial machinery and equipment, the taxes on which are used to fund a new jobs training project approved on or before June 30, 1995, do not qualify for the exemption provided in Iowa Code section 427B.17(2) nor the phaseout contained in Iowa Code section 427B.17(3) until the assessment year following the calendar year in which the funding obligations have been retired, refinanced, or refunded. At that time, the property will be subject to phaseout if acquired prior to January 1, 1994, or exempt from tax if acquired after December 31, 1993, and not previously assessed in Iowa. See subrule 80.7(1). The community college must notify the assessor by February 15 of each assessment year if the community college will be using a taxpayer's machinery and equipment taxes to finance a project that year. In any year in which the community college does rely on a taxpayer's machinery and equipment taxes for funding, the phaseout and exemption will not apply to that taxpayer that year.

80.7(8) County replacement.

a. For fiscal years beginning July 1, 1996, and ending June 30, 2001, the county replacement amount shall be equal to the difference between the assessed value of computers and industrial machinery and equipment as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, multiplied by the tax levy rate for that fiscal year. If there is an increase in valuation (the January 1, 1994, value is less), there will be no replacement for that fiscal year.

b. For fiscal years beginning July 1, 2001, and ending June 30, 2004, the county replacement amount shall be equal to the difference between the assessed value of computers and industrial machinery and equipment as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, less, if any, the increase in the assessed value of commercial and industrial property as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, multiplied by the tax levy rate for that fiscal year. If the calculation results in a negative amount, there will be no replacement for that fiscal year.

c. The replacement amounts shall be determined for each taxing district and a replacement claim summarizing the total amounts for the county prepared and submitted by the county auditor to the department of revenue by September 1 of each year. The department shall pay the replacement amount to the county treasurer in September and March of each year.

d. No replacement is allowable if a community college elects not to fund a new jobs training project with a tax on computers and industrial machinery and equipment.

This rule is intended to implement Iowa Code chapter 427B as amended by 2003 Iowa Acts, Senate File 453.

701—80.8(404) Urban revitalization partial exemption.

80.8(1) *Area designated.* An area containing only one building or structure cannot be designated as an urban revitalization area (1980 O.A.G. 786).

80.8(2) *Prior approval.* To obtain prior approval for a project, a property owner's proposal must be approved by a specific resolution addressing the proposal and passed by the city council or county board of supervisors. The original ordinance providing for the urban revitalization area does not constitute the granting of prior approval for any particular project. Also, prior approval for a project can only be

granted by resolution of the city council or county board of supervisors; an official or representative of a city or county does not have the independent authority to grant prior approval for a project.

80.8(3) *Eligibility for exemption.* Improvements made as a result of a project begun more than one year prior to a city's or county's adoption of an urban revitalization ordinance are not eligible to receive the partial exemption even though some of the improvements are added during the time the area was designated as an urban revitalization area. For a project commenced within one year prior to the adoption of an urban revitalization ordinance, the partial exemption can be allowed only for those improvements constructed on or after the effective date of the ordinance. (1982 O.A.G. 358)

80.8(4) *Minimum value added.* Once the minimum value added required by Iowa Code section 404.3(7) has been assessed, any amount of additional value added to the property in subsequent years is eligible for the partial exemption. The value added subject to partial exemption for the first year for which an exemption is claimed and allowed shall include value added to the property for a previous year even if the value added in the previous year was not by itself sufficient to qualify for the partial exemption.

For example, assume that an urban revitalization project is begun on commercial property having an actual value of $50,000 as of January 1, 1984. As a result of improvements made during 1984, the actual value of the property as of January 1, 1985, is determined to be $55,000. Additional improvements made during 1985 increase the actual value of the property to $70,000 for the 1986 assessment. In this example, no partial exemption can be allowed for 1985 since the value added for that year is less than 15 percent of the actual value of the property prior to construction of the improvements. A partial exemption can be allowed for 1986 and subsequent years for the $20,000 value added in both 1985 and 1986, providing a valid application for the partial exemption is filed between January 1, 1986, and February 1, 1986, inclusive.

80.8(5) *Application for partial exemption.*

a. Prior approval. If a taxpayer has secured a prior approval resolution from the city council or the county board of supervisors, the partial exemption cannot be obtained until the year in which all value added for the project is first assessed. A partial exemption can be allowed only if an application is filed between January 1 and February 1, inclusive, of the year in which all value added for the project is first assessed. If an application is not filed during that period, no partial exemption can be allowed for that year or any subsequent year. The submission to the city council or the county board of supervisors of a proposal to receive prior approval does not by itself constitute an application for the partial exemption.

For example, assume a city council or county board of supervisors approves a prior approval resolution in April 1984 for a revitalization project to be completed in September 1986. Assuming all construction on the project is completed in 1986, no partial exemption can be allowed until 1987 since that would be the year in which all value added for the project is first assessed. To receive the partial exemption, a valid application would have to be filed between January 1, 1987, and February 1, 1987, inclusive.

b. No prior approval. If a project has not received a prior approval resolution, a taxpayer has the option of receiving the partial exemption beginning with any year in which value is added to the property or waiting until all value added to the property is first assessed in its entirety. To secure a partial exemption prior to the completion of the project, an application must be filed between January 1 and February 1, inclusive, in each year for which the exemption is claimed.

For example, assume a revitalization project is begun in June 1984 and completed in September 1985, that no prior approval resolution for the project has been approved, and that a ten-year exemption period has been selected. Assume further that as a result of construction on the project, value is added for the assessment years 1985 and 1986. If an application is filed between January 1, 1985, and February 1, 1985, inclusive, a partial exemption could be allowed for the value added for 1985 beginning with the 1985 assessment and ending with the 1994 assessment. If an application is filed between January 1, 1986, and February 1, 1986, inclusive, a partial exemption could be allowed for the value added for 1986 beginning with the 1986 assessment and ending with the 1995 assessment. The partial exemption allowable for the years 1986 through 1995 would be against the value added for 1986 as a result of improvements made during calendar year 1985.

In the example above, the taxpayer may elect not to file an application for the partial exemption in 1985. In this situation, if an application is filed between January 1, 1986, and February 1, 1986, inclusive, a partial exemption could be allowed for the total value added for 1985 and 1986 and would apply to assessments for the years 1986 through 1995.

c. Filing deadline. If February 1 falls on a Saturday or Sunday, an application for the partial exemption may be filed the following Monday. Applications submitted by mail must be postmarked on or before February 1, or on or before the following Monday if February 1 falls on a Saturday or Sunday.

d. Extended filing deadline. The exemption is allowable for the total number of years in the exemption schedule if a claim for exemption is filed within two years of the original February 1 filing deadline. The city council or county board of supervisors may by resolution provide that an application for the partial exemption can be filed by February 1 of any assessment year the area is designated as an urban revitalization area. The exemption shall be allowed for the same number of years remaining in the exemption schedule selected as would have been remaining had the claim for exemption been timely filed.

80.8(6) *Value exempt.* The partial exemption allowed for a year in which an application is filed shall apply to the value added and first assessed for that year and any value added to the project and assessed for a preceding year or years and for which a partial exemption had not been received.

80.8(7) *Minimum assessment.* The partial exemption shall apply only to the value added in excess of the actual value of the property as of the year immediately preceding the year in which value added was first assessed. If the actual value of the property is reduced for any year during the period in which the partial exemption applies, any reduction in value resulting from the partial exemption shall not reduce the assessment of the property below its actual value as of January 1 of the assessment year immediately preceding the year in which value added was first assessed. This subrule applies regardless of whether the reduction in actual value is made by the assessor, the board of review, a court order, or an equalization order of the department of revenue.

80.8(8) *Value added.* As used in this rule, the term "value added" means the amount of increase in the actual value of real estate directly attributable to improvements made as part of a revitalization project. The amount of "actual value added" shall be the difference between the assessed value of the property on January 1 of the year value is added to the property and the assessed value of the property the following assessment year. "Value added" does not include any increase in actual (market) value attributable to that portion of the real estate assessed prior to the year in which revitalization improvements are first assessed. The sales price of the property rather than the assessed value of the property may be used in determining the percentage increase required to qualify for exemption if the improvements were begun within one year of the date the property was purchased.

80.8(9) *Repeal of ordinance.* An urban revitalization project which has received proper prior approval shall be eligible to receive the partial exemption following completion of the project even if the city council or county board of supervisors subsequently repeals the urban revitalization ordinance before improvements in the project are first assessed (1980 O.A.G. 639).

This rule is intended to implement Iowa Code chapter 404 as amended by 2002 Iowa Acts, House File 2622.

[**ARC 7726B**, IAB 4/22/09, effective 5/27/09; **ARC 2657C**, IAB 8/3/16, effective 9/7/16]

701—80.9(427C,441) Forest and fruit-tree reservations.

80.9(1) *Determination of eligibility for exemption.* Property for which an application for exemption as a forest or fruit-tree reservation has been filed shall be inspected by the assessor or county conservation board. The county board of supervisors designates whether all inspections in the county are to be made by the assessor, including any city assessor, or by the county conservation board. When appropriate, aerial photographs may be used in place of an on-site inspection of the property. The assessment or exemption of the property is to be based upon criteria established by the state conservation commission and findings obtained by the inspection of the property or the examination of aerial photographs of the property.

80.9(2) *Application for exemption.*

a. An application for exemption must be filed with the appropriate assessor between January 1 and February 1, inclusive, of the assessment year for which the exemption is first claimed. If the inspection of the property is to be made by the county conservation board, the assessor shall forward the application to the board for its recommendation. Once the application has been accepted, the exemption is applicable to the current and subsequent assessment years and no further application shall be required so long as the property remains eligible for the exemption.

b. If February 1 falls on a Saturday or Sunday, an application for exemption may be filed the following Monday.

c. An application shall be considered to be timely filed if postmarked on or before February 1 or the following Monday if February 1 falls on a Saturday or Sunday.

80.9(3) *Notification to property owner.* If the property is to be inspected by the county conservation board, the board shall make every effort to submit its recommendation to the assessor in sufficient time for the assessor to notify the claimant by April 15. The assessor shall notify the claimant by April 15 of the disposition of the application for exemption. If because of the date on which an application is filed a determination of eligibility for the exemption cannot be made in sufficient time for notification to be made by April 15, the assessor shall assess the property and notify the property owner of the inability to act on the application. The notification shall contain the actual value and classification of the property and a statement of the claimant's right of appeal to the local board of review.

80.9(4) *Appeal of eligibility determination.* If a property for which a claim for exemption as a forest or fruit-tree reservation is assessed for taxation, the property owner may appeal the assessment to the board of review under Iowa Code section 441.37.

80.9(5) *Valuation of property.* For each assessment year for which property is exempt as a forest or fruit-tree reservation, the assessor shall determine the actual value and classification that would apply to the property were it assessed for taxation that year. In any year for which the actual value or classification of property so determined is changed, the assessor shall notify the property owner pursuant to Iowa Code sections 441.23, 441.26 and 441.28.

80.9(6) *Recapture tax.*

a. Assessment of property. If the county conservation board or the assessor determines a property has ceased to meet the eligibility criteria established by the state conservation commission, the property shall be assessed for taxation and subject to the recapture tax. The property shall be subject to taxes levied against the assessment made as of January 1 of the calendar year in which the property ceased to qualify for exemption. In addition, the property shall be subject to the tax which would have been levied against the assessment made as of January 1 of each of the five preceding calendar years for which the property received an exemption.

b. Assessment procedure. If the determination that a property has ceased to be eligible for exemption is made by the assessor by April 15, the assessor shall notify the property owner of the assessment as of January 1 of the year in which the determination is made in accordance with Iowa Code sections 441.23, 441.26, and 441.28. The assessment of the property for any of the five preceding years and for the current year, if timely notice by April 15 cannot be given, shall be by means of an omitted assessment as provided in Iowa Code section 443.6 (*Talley v. Brown,* 146 Iowa 360, 125 N.W. 243(1910)). Appeal of the omitted assessment may be taken pursuant to Iowa Code sections 443.7 and 443.8.

c. Computation of tax. The county auditor shall compute the tax liability for each year for which an assessment has been made pursuant to subrule 80.9(6), paragraph *"b."* The tax liability shall be the amount of tax that would have been levied against each year's assessment had the property not received the exemption. In computing the tax, the valuations established by the assessor shall be adjusted to reflect any equalization order or assessment limitation percentage applicable to each year's assessment.

d. Entry on tax list. The tax liability levied against assessments made as of January 1 of any year preceding the calendar year in which the property ceased to qualify for exemption shall be entered on the tax list for taxes levied against all assessments made as of January 1 of the year immediately preceding the calendar year in which the property ceased to qualify for exemption. However, if those taxes have

already been certified to the county treasurer, the recapture taxes shall be entered on the tax list for taxes levied against assessments made as of January 1 of the year in which the property ceased to qualify for exemption. The tax against the assessment made as of January 1 of the year in which the property ceased to qualify for exemption shall be levied at the time taxes are levied against all assessments made as of that date.

e. Delinquencies. Recapture taxes shall not become delinquent until the time when all other unpaid taxes entered on the same tax list become delinquent.

f. Exceptions to recapture tax.

(1) Fruit-tree or forest reservations. Property which has received an exemption as a fruit-tree or forest reservation is not subject to the recapture tax if the property is maintained as a fruit-tree or forest reservation for at least five full calendar years following the last calendar year for which the property was exempt as a fruit-tree or forest reservation.

(2) Property which has been owned by the same person or the person's direct descendants or antecedents for at least ten years prior to the time the property ceases to qualify for exemption shall not be subject to the recapture tax.

(3) Property described in subparagraphs 80.9(6)*"f"*(1) and 80.9(6)*"f"*(2) is subject to assessment as of January 1 of the calendar year in which the property ceases to qualify for exemption.

This rule is intended to implement Iowa Code chapter 427C as amended by 2001 Iowa Acts, House File 736, and Iowa Code section 441.22.

[**ARC 7726B**, IAB 4/22/09, effective 5/27/09]

701—80.10(427B) Underground storage tanks.

80.10(1) *Authority of city councils and county boards of supervisors.* A city council or county board of supervisors may provide by ordinance to grant property tax credits to small business owners for payment of underground storage tank cleanup costs. The ordinance is to designate the period of time over which the credit is to be granted (not to exceed ten years) and the percentage of credit to be granted each year. If the ordinance is repealed, existing credits are to continue through their designated expiration date. A small business means a business with gross receipts of less than $500,000 per year.

80.10(2) *Application for credit.* The small business owner is required to file an application for credit with the respective city council or county board of supervisors by September 30 of the year following the calendar year in which cleanup costs were paid and each succeeding year the credit is applicable. The application for credit shall be prescribed by the director of revenue and shall contain, but not be limited to, the small business owner's cleanup costs and gross receipts for the most recent tax year.

80.10(3) *Allowance of credit.* Credits granted by a county board of supervisors are applicable only to property located outside the corporate limits of a city and credits granted by a city council are only applicable to property located within the corporate limits of the city. The amount of the credit granted cannot exceed the small business owner's cleanup costs nor the amount of city or county taxes paid on the property where the underground storage tank is located for any fiscal year the credit is applicable. Upon approval of the application for credit, the city council or county board of supervisors shall direct its city clerk or county treasurer to reimburse the small business owner in the amount of the designated credit.

This rule is intended to implement Iowa Code sections 427B.20 to 427B.22.

701—80.11(425A) Family farm tax credit.

80.11(1) *Eligibility for credit.* Generally, the family farm tax credit is only intended to benefit tracts of agricultural land that are owned by certain individuals or enumerated legal entities if the owner or other specified persons are actively engaged in farming.

a. In order for a tract of land to qualify for the family farm tax credit, the following three criteria must be satisfied:

(1) The tract of land must be an "eligible tract of agricultural land" as defined in Iowa Code subsection 425A.2(5). This means the tract must be ten acres or more or contiguous to a tract of more than ten acres and used in good faith for agricultural or horticultural purposes. More than half of

the acres in the tract must be devoted to the production of crops or livestock by a designated person. Contiguous tracts under the same legal ownership and located within the same county are considered one tract. Only tracts of land that are classified as agricultural real estate qualify for the credit.

(2) The tract of land must be owned by:

1. An individual or persons related or formerly related to each other, or
2. A partnership where all the partners are related or formerly related to each other, or
3. A family farm corporation as defined in Iowa Code subsection 9H.1(8), or
4. An authorized farm corporation as defined in Iowa Code subsection 9H.1(3).

The ownership criteria must be met on June 30 of the fiscal year prior to the fiscal year in which the application for credit is filed. For example, the ownership criteria must be met on June 30, 1990, for applications for credit filed in 1990.

(3) A designated person must be "actively engaged in farming" the tract during the fiscal year prior to the fiscal year in which the application for credit is filed. If the tract is owned by an individual or related persons, the designated person who is actively engaged in farming must be an owner of the tract, the owner's spouse, or the owner's relative within the third degree of consanguinity or their spouses. This includes the owner's child, stepchild, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, uncle, aunt, niece, or nephew or their spouses. The only step relative that may qualify as a designated person is a stepchild. If the owner of the tract is a partnership, the designated person who is actively engaged in farming must be a partner or a partner's spouse. If the owner of the tract of land is a family farm corporation, the designated person who is actively engaged in farming must be a family member who is a shareholder of the family farm corporation or the shareholder's spouse. If the owner of the tract of land is an authorized farm corporation, the designated person who is actively engaged in farming must be the shareholder who owns at least 51 percent of the stock of the authorized farm corporation or that shareholder's spouse.

If the owner is an individual who leases the land to a family farm corporation or partnership, a shareholder of the corporation or a partner of the partnership shall be considered a designated person if the combined stock of the family farm corporation or the combined partnership interest owned by the owner, the owner's spouse and persons related to the owner within the third degree of consanguinity and their spouses is equal to at least 51 percent of the stock of the family farm corporation or the ownership interest in the partnership.

b. In order to be "actively engaged in farming" the designated person must be personally involved in the production of crops or livestock on the "eligible tract" on a regular, continuous and substantial basis. Personal involvement in the production of crops or livestock includes not only field activities such as soil preparation and testing, planting, fertilizing, spraying, inspecting, cultivating and harvesting but also managerial decision-making activities relating to hybrid selection, crop rotation planning, crop selection, equipment purchases and marketing strategies. Personal involvement in the production of crops or livestock also includes activities pertaining to crop insurance selection, loan selection, and financial record maintenance and preparation. A person performing activities in the capacity of a lessor, whether under a cash or crop-share lease and whether under a written or oral lease, is not actively engaged in farming on the area of the tract covered by the lease.

c. Tracts subject to a federal program pertaining to agricultural land. In lieu of satisfying the "actively engaged in farming" test, a designated person may demonstrate that the person was in general control of the tract which was subject to a federal program pertaining to agricultural land during the prior fiscal year. This alternative test is intended to apply in circumstances where the active farming criteria cannot be met because the land is in the Conservation Reserve Program (commonly referred to as the CRP) or a program substantially similar to the 0/92 option where the tract has been taken out of production.

d. The following examples illustrate family farm tax credit eligibility under various circumstances:

EXAMPLE 1. A and B jointly own land and were both personally involved in the farming operation. They are not related. No credit is allowable because it is a requirement that individual owners be related. If A and B were brothers, the land would qualify for the credit.

EXAMPLE 2. A owns the land and is retired. A leased the land to B, his son. B was personally involved in the farming operation. The land is eligible for the credit even though a lease arrangement existed because the actively engaged in farming requirement can be satisfied through the activities of the owner's spouse, or the owner's relative within the third degree of consanguinity or the relative's spouse. See paragraph *"a,"* subparagraph (3), of this subrule. No credit would be allowable if A and B were not related.

EXAMPLE 3. A owns two contiguous 40-acre tracts. A farmed all of one tract but only 15 acres of the other tract. The other 25 acres of the second tract were leased to a nondesignated person. Both tracts qualify for the credit because contiguous tracts under the same legal ownership are considered one tract and more than half of the total of 80 acres (40 + 15 = 55) were farmed by A.

EXAMPLE 4. The land is owned by a partnership in which the partners A, B, C and D are brothers. A and B farm the land but C and D have no involvement in the farming operation. The land is eligible for the credit because it makes no difference what level of involvement each partner had nor does it matter that one or more of the partners were not personally involved in the farming operation. The only requirement for qualifying for the credit is that at least one of the partners or one of the partners' spouses was personally involved in the farming operation. No credit would be allowable if all the partners were not related to each other.

EXAMPLE 5. The land is owned by a family farm corporation in which the stock is owned equally by A, B and C. A and B are brothers but not related to C. All three partners were personally involved in the farming operation. The land qualifies for the credit because it is only a requirement that a family member who is a shareholder in the family farm corporation be involved in the farming operation. The land would qualify for the credit even if B was not involved in the farming operation. However, no credit would be allowable if only C was involved in the farming operation.

EXAMPLE 6. The land is owned by an authorized farm corporation in which 60 percent of the stock is owned by A and 40 percent of the stock is owned by B. Both A and B were personally involved in the farming operation. The credit is allowable as long as the stockholder who owns at least 51 percent of the stock was personally involved in the farming operation. No credit would be allowable if A was not personally involved in the farming operation.

80.11(2) *Application for credit.* To obtain the credit, the owner must file an application for credit with the assessor by November 1. If the claim for credit is approved, no further filing shall be required provided the ownership and the designated person actively engaged in farming the property remain the same during successive years. A new application for credit shall be required only if the property is sold or the designated person changes. The county board of supervisors shall review all claims and make a determination as to eligibility. The claimant may appeal a decision of the board to district court by giving written notice to the board within 20 days of the board's notice.

80.11(3) *Application of credit.* The county auditor shall certify to the department of revenue by April 1 the total amount of family farm tax credits due the county. The county auditor shall apply the credit to each eligible tract of land in an amount equal to the school district tax rate which is in excess of $5.40 multiplied by the taxable value of the eligible tract.

80.11(4) *Penalty.* The owner shall provide written notice to the assessor if the designated person changes. Failure to do so shall result in the owner's being liable for the amount of the credit plus a penalty equal to 5 percent of the amount of the credit granted.

This rule is intended to implement Iowa Code chapter 425A as amended by 2001 Iowa Acts, House Files 712 and 713.

701—80.12(427) Methane gas conversion property.

80.12(1) *Application for exemption.* An application for exemption is required to be filed with the appropriate assessing authority by February 1 of each year. The assessed value of the property is to be prorated to reflect the appropriate amount of exemption if the property used to convert the methane gas to energy also uses another fuel. The first year exemption shall be equal to the estimated ratio that the methane gas consumed bears to the total fuel consumed times the assessed value of the property. The exemption for subsequent years shall be based on the actual ratio for the previous year.

80.12(2) *Eligibility for exemption.* To qualify for exemption, the property must be used either in an operation that decomposes waste and converts it to methane gas or other gases produced as a byproduct of waste decomposition, then collects the gases and converts them to energy; or in an operation that collects waste in order to decompose it to produce methane gas or other gases for conversion into energy. The exemption applies to both property used in connection with, or in conjunction with, a publicly owned sanitary landfill and to property not used in connection with, or in conjunction with, a publicly owned sanitary landfill.

The exemption for property not used in an operation connected with, or in conjunction with, a publicly owned sanitary landfill is limited to property originally placed in operation on or after January 1, 2008, and on or before December 31, 2012, and will be available for the ten-year period following the date the property was originally placed in operation.

This rule is intended to implement Iowa Code section 427.1(29) as amended by 2009 Iowa Acts, Senate File 478, section 224.

[**ARC 7726B**, IAB 4/22/09, effective 5/27/09; **ARC 8358B**, IAB 12/2/09, effective 1/6/10]

701—80.13(427B,476B) Wind energy conversion property.

80.13(1) *Special valuation allowed by ordinance.* A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property. If the ordinance is repealed, the special valuation applies through the nineteenth assessment year following the first year the property was assessed. Once the ordinance has been repealed and the special valuation is no longer applicable, the property must be valued at market value rather than at 30 percent of net acquisition cost. The special valuation applies to property first assessed on or after the effective date of the ordinance. The local assessor must value the property in accordance with the schedule provided in Iowa Code section 427B.26(2). The property qualifies for special valuation provided the taxpayer files a declaration of intent with the local assessor by February 1 of the assessment year in which the property is first assessed for tax to have the property locally assessed. The property must not be assessed until the assessment year following the year the entire wind plant is completed. A wind plant is completed when it is placed in service.

80.13(2) *Special valuation not allowed by ordinance.* If a city council or county board of supervisors has not passed an ordinance providing for the special valuation of wind energy conversion property, the property is to be assessed by the department of revenue for a period of 12 years, and the taxes payable on the facilities are to be paid to the department at the same time as regular property taxes. The owner of the facility must file an annual report with the department by May 1 of each year during the 12-year assessment period, and the department must certify the assessed value of the facility by November 1 of each year to the county auditor. The board of supervisors must notify the county treasurer to state on the tax statement that the property taxes are to be paid to the department. The board must also notify the department of those facilities that are required to pay the property taxes to the department. The department must notify the county treasurer of the date the taxes were paid within five business days of receipt, and the notification is authorization for the county treasurer to mark the record as paid in the county system.

This rule is intended to implement Iowa Code section 427B.26 and chapter 476B as amended by 2009 Iowa Acts, Senate File 456, sections 2 and 4.

[**ARC 7726B**, IAB 4/22/09, effective 5/27/09; **ARC 8358B**, IAB 12/2/09, effective 1/6/10]

701—80.14(427) Mobile home park storm shelter.

80.14(1) *Application for exemption.* An application for exemption must be filed with the assessing authority by February 1 of the first year the exemption is requested. Applications for exemption are not required in subsequent years if the property remains eligible for exemption.

80.14(2) *Eligibility for exemption.* The structure must be located in a mobile home park as defined in Iowa Code section 435.1.

80.14(3) *Valuation exempted.* If the structure is used exclusively as a storm shelter, it shall be fully exempt from taxation. If the structure is not used exclusively as a storm shelter, the exemption shall be limited to 50 percent of the structure's commercial valuation.

This rule is intended to implement Iowa Code Supplement section 427.1(30).

701—80.15(427) Barn and one-room schoolhouse preservation. The increase in value added to a farm structure constructed prior to 1937 or one-room schoolhouse as a result of improvements made is exempt from tax. An application must be filed with the assessor by February 1 of the first assessment year only and the exemption is to continue as long as the structure continues to be used as a barn or in the case of a one-room schoolhouse is not used for dwelling purposes. A "barn" is an agricultural structure that is used for the storage of farm products or feed or the housing of farm animals, poultry, or farm equipment.

This rule is intended to implement Iowa Code sections 427.1(31) and 427.1(32) as amended by 2000 Iowa Acts, House File 2560.

701—80.16(426) Agricultural land tax credit.

80.16(1) *Eligibility for credit.* The credit shall be allowed on land in tracts of ten acres or more, or land of less than ten acres if part of other land of more than ten acres, and used for agricultural or horticultural purposes.

80.16(2) *Application for credit.* No application for credit is required.

80.16(3) *Application of credit.* The county auditor shall certify to the department of revenue by April 1 the total amount of agricultural land tax credits due the county. The county auditor shall apply the credit to each eligible tract of land in an amount equal to the school district tax rate which is in excess of $5.40 multiplied by the taxable value of the eligible tract.

This rule is intended to implement Iowa Code chapter 426 as amended by 2001 Iowa Acts, House File 713.

701—80.17(427) Indian housing property. Property owned and operated by an Indian housing authority, as defined in 24 CFR 950.102, is exempt from taxation provided the exemption has been approved by the city council or county board of supervisors, whichever is applicable, and a valid claim for exemption has been filed pursuant to Iowa Code section 427.1(14) by February 1.

This rule is intended to implement Iowa Code section 427.1 as amended by 2001 Iowa Acts, Senate File 449.

701—80.18(427) Property used in value-added agricultural product operations. Fixtures used for cooking, refrigeration, or freezing of value-added agricultural products used in value-added agricultural processing or used in direct support of value-added agricultural processing are exempt from tax. Direct support includes storage by public refrigerated warehouses for processors of value-added agricultural products prior to the start of the value-added agricultural processing operation. The exemption does not apply to fixtures used primarily for retail sale or display. If the taxpayer is a retailer, there is a presumption that the fixtures are being used primarily for retail sale or display. The exemption applies only to fixtures that are attached in a manner set forth in Iowa Code section 427A.1(2).

The following definitions apply to this rule:

"Fixture" means property which was originally personal property but which by being physically attached to the realty becomes part of the realty and upon removal does not destroy the property to which it is attached.

"Value-added agricultural processing" means an operation whereby an agricultural product is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in a marketable agricultural product to be sold at retail. These operations are commonly associated with fabricating, compounding, germinating, or manufacturing.

"Value-added agricultural product" means an agricultural product which, through a series of activities or processes, may be sold at a higher price than its original purchase price.

This rule is intended to implement Iowa Code section 427A.1 as amended by 2001 Iowa Acts, House File 715.

701—80.19(427) Dwelling unit property within certain cities. Dwelling unit property owned and managed by a nonprofit community housing development organization that owns and manages more than 150 dwelling units in a city with a population of more than 110,000 is exempt from tax. The organization must be recognized by the state and the federal government pursuant to criteria contained in the HOME program of the federal National Affordable Housing Act of 1990 and must be exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The exemption does not extend to dwelling units located outside the city. The organization must file an application for exemption with the assessing authority not later than February 1 of the assessment year. Applications for exemption are not required in successive years if the property continues to qualify for the exemption.

This rule is intended to implement Iowa Code Supplement section 427.1(21A) as amended by 2006 Iowa Acts, House File 2792.

701—80.20(427) Nursing facilities. If the assessor determines that property is being used for a charitable purpose pursuant to Iowa Code section 427.1(8), it shall be fully exempt from tax if it is licensed under Iowa Code section 135C.1(13) by the department of inspections and appeals, exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, and a valid application for exemption has been filed with the assessor by February 1 of the assessment year.

This rule is intended to implement Iowa Code Supplement section 427.1(14).

701—80.21(368) Annexation of property by a city. A city council may provide a partial tax exemption from city taxes against annexed property for a period of ten years. The exemption schedule is contained in Iowa Code Supplement section 368.11(3)*"m."* All property owners included in the annexed area must receive the exemption if the city elects to allow the exemption.

This rule is intended to implement Iowa Code Supplement section 368.11(3)*"m"* as amended by 2006 Iowa Acts, House File 2794.

701—80.22(427) Port authority. The property of a port authority created pursuant to Iowa Code Supplement section 28J.2 when devoted to public use and not held for pecuniary profit is exempt from taxation.

This rule is intended to implement Iowa Code Supplement section 427.1(34).

701—80.23(427A) Concrete batch plants and hot mix asphalt facilities. A concrete batch plant includes the machinery, equipment, and fixtures used at a concrete mixing facility to process cement dry additive and other raw materials into concrete. A hot mix asphalt facility is any facility used to manufacture hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements. These facilities shall not be assessed and taxed as real property regardless of the property's attachment to real estate. The land on which the facilities are located is taxable.

This rule is intended to implement Iowa Code section 427A.1 as amended by 2006 Iowa Acts, Senate File 2391.

701—80.24(427) Airport property. Property owned by a city or county at an airport and leased to a fixed base operator providing aeronautical services to the public is exempt from taxation.

This rule is intended to implement Iowa Code section 427.1(2) as amended by 2006 Iowa Acts, House File 2794.

701—80.25(427A) Car wash equipment. Property that is equipment used for the washing, waxing, drying, or vacuuming of motor vehicles and point-of-sale equipment necessary for the purchase of car wash services shall not be assessed and taxed as real property.

This rule is intended to implement Iowa Code section 427A.1 as amended by 2006 Iowa Acts, House File 2794.

701—80.26(427) Web search portal and data center business property. This exemption includes computers and equipment necessary for the maintenance and operation of a web search portal or data center business, including cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity, including but not limited to exterior dedicated business-owned substations, and power distribution systems which are not subject to assessment under Iowa Code chapter 437A; back-up power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays. The exemption does not apply to land, buildings, and improvements. The web search portal or data center business must meet the requirements contained in Iowa Code section 423.3, subsection 92, subsection 93, or subsection 95, for the exemption to be allowable. The owner of the property must file a claim for exemption with the assessor by February 1 of the first year the exemption is claimed. Claims for exemption in successive years will be required only for property additions.

This rule is intended to implement Iowa Code sections 427.1(35) and 427.1(36) and section 427.1 as amended by 2009 Iowa Acts, Senate File 478, section 200.
[**ARC 8358B**, IAB 12/2/09, effective 1/6/10]

701—80.27(427) Privately owned libraries and art galleries. Claims for exemption for libraries and art galleries owned and kept by private individuals, associations, or corporations for public use and not for private profit must be filed with the local assessor by February 1 of the first year the exemption is requested. Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of claims as long as the property continues to be used as a library or art gallery for public use and not for private profit.

This rule is intended to implement Iowa Code Supplement section 427.1(7) as amended by 2008 Iowa Acts, Senate File 2400.

701—80.28(404B) Disaster revitalization area. The governing body of a city or county may, by ordinance, designate an area of the city or county a disaster revitalization area if that area is within a county or portion of a county in which the governor has proclaimed a disaster emergency or the United States president has declared a major disaster. All real property within a disaster revitalization area is eligible to receive a 100 percent exemption from taxation on the increase in assessed value of the property if the increase in assessed value is attributable to revitalization of the property occurring between May 25, 2008, and December 31, 2013. The amount of increase in value shall be the difference between the assessed value of the property on January 1, 2007, and the assessed value of the property on January 1, 2010, and subsequent assessment years. The exemption is for a period not to exceed five years, starting with an assessment year beginning on or after January 1, 2010. A city or county may adopt a tax exemption percentage different from the 100 percent exemption. The different percentage adopted must not allow a greater exemption, but may allow a smaller exemption. If the homeowner elects to take the exemption provided in this rule, the homeowner may not claim any other value-added exemption. An application must be filed for each revitalization project resulting in increased assessed value for which an exemption is claimed. The application for exemption must be filed by the owner of the property with the local assessor by February 1 of the first assessment year for which the exemption is requested. After the tax exemption is granted, the exemption will continue for succeeding years without the taxpayer's having to file an application for exemption unless additional revitalization projects occur on the property. The ordinance must expire or be repealed no later than December 31, 2016.

This rule is intended to implement 2009 Iowa Acts, Senate File 457, sections 23 to 30.
[**ARC 8358B**, IAB 12/2/09, effective 1/6/10]

701—80.29(427) Geothermal heating and cooling systems installed on property classified as residential.

80.29(1) *In general.* An exemption from property tax shall be allowed for any value added to property by any new construction or refitted installation of a geothermal heating or cooling system if the geothermal heating or cooling system is constructed or installed on or after July 1, 2012, on property classified as residential. The exemption shall also be allowed for a residential dwelling on agricultural land. The exemption does not have to be claimed the year subsequent to the year the geothermal system is constructed or installed. However, every individual claiming the exemption under this rule shall file with the appropriate assessor, not later than February 1 of the year for which the exemption is requested, an application for exemption. The assessor shall then allow or disallow the exemption.

Upon the filing and allowance of the claim, the claim shall be allowed on the property for ten consecutive years without further filing as long as the property continues to be classified as residential. However, if the property ceases to be classified as residential or if the geothermal heating and cooling system ceases to exist before the ten years have expired, no exemption is allowed for the year in which the change in classification took place or for any subsequent years. The exemption amount shall remain fixed at the same amount that was allowed in the first year the exemption was allowed.

The property tax exemption applies to any value added by the addition of mechanical, electrical, plumbing, ductwork, or other equipment, labor, and expenses included in or required for the construction or installation of the geothermal system that would not have been included in the home if not for the installation of the geothermal heating and cooling system. Additionally, the proportionate value of any well field associated with the system and attributable to the owner is exempt.

80.29(2) *Calculation of value added.* As used in this rule, the terms "any value added" and "value added" mean the amount of increase in the actual assessed value of the property that is directly attributable to the new construction or refit installation of a geothermal heating or cooling system as of the first year for which the geothermal heating and cooling system is actually assessed. "Any value added" does not include speculative or indirect increases in value which, for example, may be attributable to reductions in energy consumption or reductions in the negative impact to the environment. "Any value added" does not include changes in value which are attributable to general housing market fluctuations. Cost of the new construction or refit installation of the geothermal heating or cooling system is not determinative of the value added to a property. In the event the exemption is not filed in the same year the geothermal heating and cooling system is first assessed, the amount of the exemption, upon filing, shall be the same amount as it would have been had the exemption been filed in the year the geothermal heating and cooling system was first assessed.

In the case of new construction and refit installation of a geothermal heating or cooling system, the value added is the value that would not have been included in the home if not for the construction or refit installation of the geothermal heating and cooling system. That is, the value of mechanical, electrical, plumbing, ductwork, or other equipment, labor, and expenses that would have been included with a standard heating and cooling system shall not be considered in calculating the value added. To measure the value added by a geothermal heating and cooling system, the assessor shall compute the difference between the assessed value of the residential property if the property were outfitted with a non-geothermal (standard) heating and cooling system and the assessed value of the property outfitted with the geothermal system. In the case that the new construction or refit installation takes more than one year, the assessor shall make the comparison in the year the new construction or refit installation is completed.

EXAMPLE A: Mrs. Smith wants to upgrade her current standard heating and cooling system in her home with a geothermal system. The geothermal system installation is completed on August 1, 2012. On January 22, 2013, Mrs. Smith files a claim for exemption for the value added to her property that is directly attributable to the refit installation of the geothermal system. To determine the value added that is directly attributable to the geothermal system, the assessor shall compare the value of the home as though it was outfitted with the standard heating and cooling system which was upgraded with the value of the home outfitted with the geothermal heating and cooling system; the difference between the two values is the exemption amount. That exemption amount will remain fixed for the next ten years,

until Mrs. Smith's home ceases to be classified as residential, or until the geothermal system ceases to exist, whichever occurs first. For years subsequent to 2013, any increase in the value of Mrs. Smith's home beyond the assessed value of the home outfitted with the geothermal heating and cooling system is not attributable to the geothermal system and is subject to property tax. The property tax exemption amount for the geothermal heating and cooling system will remain the same as the first year for which the exemption was received even if the assessed value of Mrs. Smith's home drops.

EXAMPLE B: Same facts as Example A, except that on January 1 of year seven, Mrs. Smith's home is reclassified as commercial property. No property tax exemption is allowed for the value added by the geothermal system for year seven or any subsequent years.

EXAMPLE C: Mr. Larson is building a new home and plans to construct a new geothermal system in lieu of a standard heating and cooling system. The home and geothermal system are completed on October 24, 2012. To determine the value added that is directly attributable to the installation of the geothermal system, the assessor shall assess the home as though it had been outfitted with a standard heating and cooling system and compare that value with the assessed value of the home outfitted with the geothermal heating and cooling system. The difference between the two amounts is the value added that is directly attributable to the geothermal system and is the exemption amount. In 2013, the assessed value of Mr. Larson's home with a standard heating and cooling system is $200,000. The assessed value of Mr. Larson's home with the geothermal system is $210,000. Therefore, the value added to the property that is directly attributable to the geothermal system is $10,000. Mr. Larson may claim an exemption amount of $10,000 starting in assessment year 2013. Mr. Larson does not lose the exemption if he fails to claim the exemption by February 1, 2013; he may claim the exemption in any year subsequent to the completion of the construction of the home. An exemption amount of $10,000 will continue for ten consecutive years after the exemption is claimed, until the property ceases to be classified as residential, or until the geothermal system ceases to exist, whichever occurs first.

EXAMPLE D: Same facts as Example C, except that Mr. Larson claims the exemption in 2019. The exemption amount in 2019, and the nine subsequent years, is the value added in the year the geothermal heating and cooling system was first assessed; here, $10,000 in 2013. The value added and exemption amount is not calculated in the year Mr. Larson claims the exemption. The $10,000 exemption will then continue until 2028, until the property ceases to be classified as residential or until the geothermal system ceases to exist, whichever occurs first.

This rule is intended to implement Iowa Code section 427.1.

[**ARC 0467C**, IAB 11/28/12, effective 1/2/13]

701—80.30(426C) Business property tax credit.

80.30(1) *Definitions.* For purposes of this rule, the following definitions shall govern.

"Contiguous parcels" means any of the following:

1. Parcels that share a common boundary. There is a rebuttable presumption that parcels separated by a roadway, alley, or waterway do not share a common boundary. The burden of proof shall be upon the property owners to provide evidence or verification that parcels separated by a roadway, alley, or waterway share a common boundary. Parcels owned to the middle of a road, waterway, alley, or railway in fee simple title are considered to share a common boundary.

2. Parcels within the same building or structure regardless of whether the parcels share a common boundary.

3. Permanent improvements to the land that are situated on one or more parcels of land that are assessed and taxed separately from the permanent improvements if the parcels of land upon which the permanent improvements are situated share a common boundary. This arrangement is more commonly referred to as buildings or permanent improvements that are taxed as buildings upon leased land.

"Dwelling unit" means an apartment, group of rooms, or single room that is occupied as separate living quarters, or, if vacant, is intended for occupancy as separate living quarters, in which a tenant can live and sleep separately from any other persons in the building. A vacant dwelling unit that does not have active utility services is not considered to be intended for occupancy. Dwelling units do not include hotels, motels, inns, or other buildings where rooms are rented for less than one month.

"Parcel" means each separate item shown on the tax list, manufactured or mobile home tax list, schedule of assessment, or schedule of rate change or charge. For fiscal years beginning on or after January 1, 2016, "parcel" also means each portion of a parcel assigned a distinct classification as set forth in rule 701—71.1(405,427A,428,441,499B).

"Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Property unit" means contiguous parcels all of which are located within the same county, with the same property tax classification, are owned by the same person, and are operated by that person for a common use and purpose.

80.30(2) *In general.* Except as provided in subrule 80.30(8), for property taxes due and payable in fiscal years beginning on and after July 1, 2014, one business property tax credit is available to each parcel classified and taxed as commercial property, industrial property, or railway property unless the parcel is part of a property unit for which a business property tax credit is claimed. For property taxes due and payable in fiscal years beginning on and after July 1, 2014, one business property tax credit is available to each property unit made up of property assessed as commercial property, industrial property, or railway property.

80.30(3) *Application for credit.*

a. Notwithstanding paragraph 80.30(3)*"b,"* for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2014, the claim for credit shall be received in the office of the applicable city or county assessor not later than January 15, 2014.

b. For a business property tax credit against property taxes due and payable during fiscal years beginning on and after July 1, 2015, and before July 1, 2017, no business property tax credit shall be allowed unless the first application for business property tax credit is received in the office of the applicable city or county assessor on or before March 15 preceding the fiscal year during which the credit first is claimed. For example, the first application for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2016, must be received in the office of the applicable city or county assessor on or before March 15, 2016.

c. For a business property tax credit against property taxes due and payable during fiscal years beginning on or after July 1, 2017, no business property tax credit shall be allowed unless the first application for the business property tax credit is received in the office of the applicable city or county assessor on or before July 1 preceding the fiscal year during which the credit is first claimed. For example, the first application for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2017, must be received in the office of the applicable city or county assessor on or before July 1, 2016.

d. A claim filed after the filing deadlines set forth in paragraphs 80.30(3)*"a,"*80.30(3)*"b,"* and 80.30(3)*"c"* will be applied against property taxes due and payable for the following year.

e. Once filed, the claim for credit is applicable to subsequent years, and no further filing shall be required as long as the parcel or property unit satisfies the requirements of the credit. If the parcel or property unit ceases to qualify for the credit, the owner shall provide written notice to the assessor by the date for filing claims in paragraphs 80.30(3)*"b"* and 80.30(3)*"c,"* as applicable, following the date on which the parcel or property unit ceases to qualify for the credit. When all or a portion of a parcel or property unit that is allowed a credit is sold or transferred or ownership otherwise changes, the buyer, transferee, or new owner who wishes to receive the credit shall refile the claim for credit. When a portion of a parcel or property unit that is allowed a credit is sold or transferred or ownership otherwise changes, the owner of the portion of the parcel or property unit for which ownership did not change shall refile the claim for credit. A transfer entered in the auditor's transfer books under 2015 Iowa Code section 558.57 shall be prima facie evidence of a change in ownership of the parcel or property unit. The burden shall be on the claimant to prove that a transfer entered in the auditor's transfer books did not result in a change in ownership. The deadline for refiling the claim shall be the same as the deadline for filing the claim.

f. In the event the application deadline falls on either a Saturday or Sunday, applications for the business property tax credit may be received in the office of the applicable city or county assessor the following Monday.

g. In the event the application deadline falls on a state holiday, applications for the business property tax credit may be received in the office of the applicable city or county assessor the following business day.

h. Table 1 shows the applicable claim receipt deadlines and the taxes toward which the claim applies.

Table 1

	Assessment Year 2013	Assessment Year 2014	Assessment Year 2015	Assessment Year 2016	Assessment Year 2017
Claim Receipt Deadline	January 15, 2014	March 16, 2015[1]	March 15, 2016	July 1, 2016	July 3, 2017[2]
For Taxes Payable	September 2014 & March 2015	September 2015 & March 2016	September 2016 & March 2017	September 2017 & March 2018	September 2018 & March 2019

[1] March 15, 2015, falls on a Sunday.

[2] July 1, 2017, falls on a Saturday.

i. An assessor may not refuse to accept an application for business property tax credit. Assessors shall remit claims for credit to the county auditor with a recommendation to allow or disallow the claim. If it is the opinion of the assessor that a business property tax credit should not be allowed, the assessor's recommendation to the county auditor shall include in writing the reasons for recommending disallowance.

j. Upon receipt from the assessor of the claims and recommendations, the county auditor shall forward the claims to the board of supervisors. The board shall allow or disallow the claims. If the board disallows a claim for credit, the board shall send written notice by mail to the claimant at the claimant's last-known address. The written notice shall state the reasons for disallowing the claim for the credit. Notwithstanding the foregoing, the board is not required to send notice that a claim for credit is disallowed if the claimant voluntarily withdraws the claim.

80.30(4) *Appeals.*

a. Initial appeal. Any person whose claim is disallowed by the board of supervisors may appeal that action to the district court of the county in which the parcel or property unit is located. Notice of appeal must be given to the county auditor within 20 days from the date on which the notification of disallowance was mailed by the board of supervisors.

b. Reversal. If the board of supervisors' disallowance of the claim for credit is reversed upon appeal, the credit shall be allowed on the applicable parcel or property unit. The department of revenue, the county auditor, and the county treasurer shall provide the credit and change their books and records accordingly. If the claimant has paid one or both of the installments of the tax payable in the year or years in question, the county treasurer shall remit the amount of the credit to the claimant and submit a request to the department for reimbursement from the business property tax credit fund. The amounts payable as credits awarded on appeal shall be allocated and paid from the balance remaining in the business property tax credit fund established in Iowa Code section 426C.2.

80.30(5) *Audit.*

a. Authority and period. The department of revenue may audit any credit provided under Iowa Code section 426C.4. However, the department shall not adjust a credit allowed more than three years from October 31 of the year in which the claim for credit was filed.

b. Recalculation or denial. If an audit reveals that the amount of the credit was incorrectly calculated or that the credit should not have been allowed, the department shall recalculate the credit, if applicable, and notify both the claimant and the county auditor of the recalculation and the reasons it is being made.

c. Recapture. If the credit has already been paid, the department shall notify the claimant, the county treasurer, and the applicable assessor of the recalculation or denial of the credit. If the claimant still owns the parcel or property unit for which the credit was claimed, the county treasurer shall collect

the tax owed in the same manner as other due and payable property taxes are collected. If the claimant no longer owns the parcel or property unit for which the credit was claimed, the department may recover the amount of tax owed by filing a lien under Iowa Code section 422.26 or by issuing a jeopardy assessment under Iowa Code section 422.30. Upon collection, the amount of the erroneously allowed credit shall be deposited in the business property tax credit fund.

d. Appeal of recalculation or denial. The claimant or the board of supervisors may appeal any decision of the department to the director of revenue. The director shall review the department's decision within 30 days from the date of the notice of recalculation or denial provided to the claimant and county auditor. The director shall grant a hearing, at which the director shall determine the correct credit, if any. The director shall notify the claimant, board of supervisors, county auditor, and county treasurer of the decision by mail. The claimant or the board of supervisors may seek judicial review of the director's decision pursuant to the provisions of Iowa Code chapter 17A.

e. False claim and penalty. Any person who makes a false claim for the purpose of obtaining a credit or who knowingly receives the credit without being legally entitled to it is guilty of a fraudulent practice. The claim for a credit for such a person shall be disallowed, and the director shall send a notice of disallowance. If the credit has been paid, the amount shall be recovered in the manner described in paragraph 80.30(5)*"c."*

80.30(6) *Property eligible for credit.*

a. Eligible parcels and property units.

Parcels and property units classified and taxed as commercial property, industrial property, or railway property under Iowa Code chapter 434 are eligible for the business property tax credit for the unit. The assessor shall keep a permanent file of all eligible property units in the assessor's jurisdiction. Each assessment year, the assessor shall update the file based on transfers of property from the auditor's transfer book.

b. Taxable status of parcels and property units.

(1) Property that is fully exempt from property tax is not eligible to receive the business property tax credit.

(2) An application for the business property tax credit shall be denied if a parcel or parcels are fully exempt from property tax at the time the application for credit is filed with the city or county assessor.

(3) Determination of eligibility of parcel or property unit based on taxable status.

1. The taxable status of the property on July 1 of the assessment year shall determine the eligibility of the parcel or property unit to receive the credit. If the parcel or property unit becomes exempt from property tax prior to July 1 of the assessment year, the credit shall be disallowed. If the parcel or property unit was taxable on July 1 of the assessment year, but becomes exempt after July 1, the parcel or property unit may receive the credit only in the prorated amount that corresponds to the amount of tax paid in that fiscal year, if any.

2. The assessor shall give notice to the auditor of partial credits allowed due to a change in taxable status of a parcel or property unit. The auditor shall update the auditor's file and give notice on forms prescribed by the department to the department of revenue of partial credits allowed due to a change in taxable status of a parcel or property unit.

(4) The owner of any parcel or property unit that has been granted the credit but becomes exempt from property tax prior to July 1 of the assessment year shall provide written notice to the city or county assessor by the date for filing claims.

(5) The taxable portion of any partially exempted property shall receive the credit only in an amount applicable to the taxable portion.

80.30(7) *Common use and purpose.* Whether parcels are operated for a common use and purpose depends on all the facts and circumstances of each set of parcels. The following nonexclusive examples illustrate common use and purpose.

EXAMPLE 1. ABC Properties is in the business of building, owning, leasing, and managing large retail spaces. ABC builds and owns a large shopping mall that covers contiguous parcels, all of which are located within the same county. Although the retail establishments that lease retail space in the shopping mall offer different products and services, the shopping mall is owned and operated by ABC

for the common use and purpose of being a lessor. Thus, the parcels that make up the mall are eligible as a single property unit.

EXAMPLE 2. John's LLC owns four commercial parcels located within the same building, and they are, therefore, contiguous as defined in subrule 80.30(1). John's owns and operates two parcels as a beauty parlor. John's rents the other two parcels to a bicycle shop. The four parcels, together, do not have a common use and purpose. However, the two parcels used by John's as an owner-operator of the beauty parlor business are operated with the common use and purpose of providing beauty services and are eligible as one property unit. The two parcels that John's rents to the bicycle shop are operated with the common use and purpose of being rented out for profit as a landlord and are eligible as a second property unit.

80.30(8) *Property ineligible for credit.* The following are not eligible to receive a business property tax credit or to be part of a property unit that receives the business property tax credit:

a. Property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code, as amended, and that is subject to assessment procedures relating to Section 42 property under Iowa Code section 441.21, subsection 2, for the applicable assessment year.

b. Property classified as multiresidential under 701—subrule 71.1(5).

80.30(9) *Application of credit.*

a. A person may claim and receive one business property tax credit for each eligible parcel unless the parcel is part of a property unit for which a credit is claimed.

b. A person may claim and receive one business property tax credit for each property unit. A claim for credit on a parcel that is part of a property unit constitutes a claim for credit on the entire unit.

c. A credit approved for a property unit shall be allocated to the several parcels within the property unit in the proportion that each parcel's total amount of property taxes due and payable bears to the total amount of property taxes due and payable on the property unit.

d. The classification of property used to determine eligibility for the business property tax credit shall be the classification of the property for the assessment year used to calculate the taxes due and payable in the fiscal year for which the credit is claimed.

e. Once filed and allowed, the credit shall continue to be allowed on the parcel or property unit for successive years without further filing of an application unless the parcel or property unit ceases to qualify for the credit under Iowa Code chapter 426C.

f. When all or a portion of a parcel or property unit is sold or transferred or ownership otherwise changes, the new owner must reapply for the credit. The owner of the portion of a parcel or property unit that did not change shall also reapply for the credit. When the composition of a property unit changes as the result of a sale, transfer, or change in ownership, the owner of the property unit must reapply for the credit on the entire unit.

g. The following noninclusive examples illustrate the application of the business property tax credit under various circumstances.

EXAMPLE 1. On February 13, 2015, Mr. Jones files with his county assessor an application for the business property tax credit for taxes due and payable in the fiscal year beginning July 1, 2015. The property that Mr. Jones claims is eligible for the credit is a single parcel that is classified as commercial property. The property is not rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code. The property is not a mobile home park, manufactured home community, land-leased community, or assisted living facility nor is it primarily used or intended for human habitation with three or more separate dwelling units. Therefore, Mr. Jones' application should be approved as a credit against the taxes due and payable in the fiscal year beginning July 1, 2015.

EXAMPLE 2. Same facts as in EXAMPLE 1, but Mr. Jones files his application on July 3, 2016. Mr. Jones' application should be approved, but the credit will be against taxes due and payable in the fiscal year beginning July 1, 2018.

EXAMPLE 3. Davidoff LLC owns two parcels of land, both of which are classified as industrial property. Each parcel is being operated for a common use and purpose. The parcels are separated by a road. If Davidoff owns the property parcels to the middle of the road in fee simple title, the parcels are considered contiguous and would qualify as a unit, and Davidoff would be eligible for a single business

property tax credit. If a third party, including the state, a municipality, or other government entity, owned the road in fee simple title, the parcels would not be considered contiguous, and Davidoff would be eligible for two separate business property tax credits.

EXAMPLE 4. In Madison County, Iowa, there is a wind farm that consists of four wind turbines that are taxed separately as permanent improvements to the land. All the wind turbines are owned by Windy LLC. The turbines sit upon four parcels of land that share a common boundary. Each parcel of land is owned by a different owner. The four wind turbines are contiguous because the wind turbines are taxed as permanent improvements to the land, they are situated upon four parcels of land that share a common boundary, and the land is assessed and taxed separately from the wind turbines. The four wind turbines qualify as a property unit and would be eligible for one business property tax credit.

80.30(10) *Calculation of credit.*

a. Auditor certification. On or before June 30 of each year, the county auditor shall certify to the department the following:

(1) The claims allowed by the board of supervisors in that county;

(2) The actual value, prior to the imposition of any applicable assessment limitations, of the parcels and property units for which credits were allowed in that county; and

(3) The information applicable to the location of the parcels and property units.

b. Department process and methodology.

(1) Department of management information. The department shall obtain from the department of management tax district and applicable consolidated rates. The department shall calculate the credit using the estimated consolidated levy rates obtained from the department of management. The department shall modify the credit accordingly upon certification by the auditor of the actual consolidated levy rates.

(2) Initial amount of actual value. For each parcel or property unit certified by the county auditor, the department shall calculate, for each fiscal year, an initial amount of actual value to use for determining the amount of credit for each such parcel or property unit that provides the maximum possible credit according to the credit formula and limitations prescribed by Iowa Code section 426C.3(5). The department shall also calculate the initial amount of actual value so as to provide that the total dollar amount of credits against the taxes due and payable in the fiscal year equals 98 percent of the moneys in the business property tax credit fund following the deposit of the appropriation for the fiscal year, including any interest or earnings that have been credited to the fund.

(3) Credit amount. The amount of the credit shall be calculated as follows:

Step 1. Determine the lesser of the actual value calculated in paragraph 80.30(10)*"a"* and the initial value calculated in subparagraph 80.30(10)*"b"*(2).

Step 2. Multiply the amount determined in Step 1 by the difference between the assessment limitation percentage applicable to the parcel or property unit under Iowa Code section 441.21(5) and the assessment limitation applicable to residential property under Iowa Code section 441.21(4). For purposes of this calculation, such difference shall be stated as a percentage.

Step 3. Divide the product of Steps 1 and 2 by $1000.

Step 4. Multiply the quotient obtained in Step 3 by the consolidated levy rate or average consolidated levy rate per $1000 of taxable value applicable to the parcel or property unit for the fiscal year for which the credit is claimed as certified by the county auditor under Iowa Code section 426C.3(5).

(4) Allocation to parcels. The business property tax credit approved for a property unit shall be allocated to the several parcels within the property unit in the proportion that each parcel's total amount of property taxes due and payable bears to the total amount of property taxes due and payable on the property unit.

(5) Limitation on information. Notwithstanding the foregoing, the department's calculations shall be based upon the certified information it has received by June 30 of each fiscal year. Any information, whether certified or uncertified, received after June 30 of each fiscal year will not be included in the department's credit calculations for the applicable fiscal year.

This rule is intended to implement Iowa Code chapter 426C.

[**ARC 1382C**, IAB 3/19/14, effective 4/23/14; **ARC 2508C**, IAB 4/27/16, effective 6/1/16]

701—80.31(427) Broadband infrastructure.

80.31(1) *Definitions.* For purposes of this rule, the following definitions shall govern.

"Broadband" means a high-speed, high-capacity electronic transmission medium, including fixed wireless and mobile wireless mediums, that can carry data signals from independent network sources by establishing different bandwidth channels and that is commonly used to deliver Internet services to the public.

"Broadband infrastructure" means the physical infrastructure used for the transmission of data that provides broadband services. "Broadband infrastructure" does not include land, buildings, structures, improvements, or equipment not directly used in the transmission of data via broadband.

"Certified project" means the installation of broadband infrastructure certified by the office of the chief information officer to serve a targeted service area.

"Communications service provider" means a service provider that provides broadband service.

"Date of commencement" means the date first occurring after July 1, 2015, and before July 1, 2020, in which broadband infrastructure used in a certified project becomes property taxed as real property as determined by Iowa Code section 427A.1.

"Date of completion" or *"completed"* means the date that a communications service provider offers or facilitates broadband service delivered at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area.

"Installation of the broadband infrastructure" means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. "Installation of the broadband infrastructure" does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

"Targeted service area" means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block, within which no communications service provider offers or facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of July 1, 2015.

80.31(2) *Exemption.* An exemption from property tax shall be allowed for each certified project in the amount equal to 100 percent of the actual value added by installation of the broadband infrastructure in a targeted service area that facilitates broadband service for the public at or above 25 megabits per second of download speed and 3 megabits per second of upload speed, as certified by the office of the chief information officer. The exemption shall be allowed beginning January 1 of the assessment year in which an application for exemption is approved until the exemption is revoked or at the expiration of ten years, whichever occurs earlier.

80.31(3) *Calculation of actual value added by installation of the broadband infrastructure.* The actual value added by installation of the broadband infrastructure is the amount of increase in the actual assessed value of the property that is directly attributable to the installation of broadband infrastructure in a targeted service area for the assessment year in which the property receives the exemption. Changes in the value of the property which are attributable to general market fluctuations are not to be included in the calculation of the actual value added by installation of the broadband infrastructure. Installation of broadband infrastructure that is not part of a certified project is not eligible to receive the exemption.

Broadband infrastructure in general may be assessed locally or by the department of revenue. Broadband infrastructure that qualifies as telephone or telegraph property under Iowa Code chapter 433 is centrally assessed by the department of revenue. Broadband infrastructure that does not qualify as telephone or telegraph property under Iowa Code chapter 433 is locally assessed under Iowa Code chapter 441. The owner of the property must separately report property that is centrally assessed from property that is locally assessed.

a. Locally assessed property. The local assessor shall determine the actual value added by installation of broadband infrastructure using the methodologies required under Iowa Code section 441.21.

b. Centrally assessed property. The department of revenue shall determine the actual value added by installation of the broadband infrastructure by using the appropriate methodologies set forth in 701—Chapter 77.

The department shall calculate the actual value added by installation of the broadband infrastructure as part of the total unit value of the operating property of the company. The exemption attributable to the installation of the broadband infrastructure shall be applied to each unit before any other exemption or credit. In no case shall the taxable value of the property be reduced below zero. The department shall certify the exemption value per line mile for each company to the county auditor pursuant to Iowa Code section 433.8.

80.31(4) *Commencement and completion of project.* To be eligible for the exemption, the date of commencement of the installation of the broadband infrastructure must occur on or after July 1, 2015, and the date of completion of the installation of the broadband infrastructure must occur on or before July 1, 2020.

80.31(5) *Application for exemption.* The owner of broadband infrastructure shall file one application with the department of revenue. The department shall forward the application to the appropriate county boards of supervisors for approval or denial for broadband infrastructure associated with property subject to local assessment. The department shall retain the application for approval or denial for broadband infrastructure associated with property subject to central assessment.

a. Application deadline. The owner of the property shall file the application with the department of revenue by February 1 of the year in which the broadband infrastructure is first assessed for taxation or by February 1 of the following two assessment years. If approved, the exemption shall be allowed for ten years from January 1 of the assessment year in which the application is filed or until revoked without further application. However, at any time prior to the completion of the installation of the broadband infrastructure, an owner may submit a proposal to the department requesting that the owner be allowed to file an application for exemption by February 1 of any other assessment year following completion of the installation of broadband infrastructure. The department shall approve the proposal for property that is centrally assessed. The board of supervisors shall approve the proposal by resolution for property that is locally assessed. If approved, the exemption shall be allowed for ten years from January 1 of the assessment year in which the application is approved or until revoked without further application. If an exemption that was revoked is reinstated on appeal, the exemption shall remain in effect only for the remaining period of exemption. No property shall receive an exemption for the installation of broadband infrastructure for a period greater than ten years.

Neither the department nor the board of supervisors shall approve an application for exemption that is missing any of the requirements listed in this subrule. The department or the board of supervisors may consult with the office of the chief information officer in order to obtain additional information necessary to review an application for exemption.

b. Application requirements. The owner shall submit the application to the department of revenue. It is the responsibility of the owner to ensure that the application is complete and accurate. The application must be made on forms prescribed by the department. In addition, the application must contain the following information, certifications and documentation:

(1) The nature of the broadband infrastructure installation, including the number of new line miles installed within the jurisdiction of the assessing authority to which the owner is applying for exemption, and a description of the property and how it is directly related to delivering broadband services.

(2) The percentage of homes, farms, schools, and businesses in the targeted service area that will be provided access to broadband service.

(3) The actual cost of installing the broadband infrastructure under the project, if available. The application shall contain supporting documents demonstrating actual cost.

(4) Certification from the office of the chief information officer pursuant to Iowa Code section 8B.10 that the installation is being performed or was completed in a targeted service area, including whether or not the targeted service area designation is under appeal pursuant to rule 129—21.7(8B,427), and that it facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed.

(5) Certification by the company of the date of commencement and actual or estimated date of completion. If an application contains only an estimated date of completion, the owner must notify the department of the actual completion date once the certified project is completed. If the actual completion date occurs after July 1, 2020, the exemption may be revoked.

(6) A copy of any nonwireless broadband-related permit issued by a political subdivision, if applicable.

c. Special application requirements. If an owner submits a proposal to the department prior to the completion of the installation of broadband infrastructure requesting to file an application for exemption in any other assessment year following completion of the project, the owner must provide the following information and documentation in addition to those required under paragraph 80.31(5)*"b."*

(1) The actual cost already incurred for installation of broadband infrastructure, if any, with supporting documentation demonstrating the actual cost.

(2) The estimated costs for project completion.

(3) The estimated date of project completion. Once the project has been completed, the owner must notify the department of the actual completion date. If the actual completion date occurs after July 1, 2020, the exemption may be revoked.

d. Approval or denial of application. All applications shall be submitted to the department of revenue. The department shall forward applications for property subject to local assessment to the board of supervisors of the county in which the exempt property is located. The department shall retain the applications for centrally assessed property. The department and the board of supervisors, as applicable, shall notify an applicant of approval or denial of an application for exemption by March 1 of the assessment year in which the application was submitted. The notification shall include a notification of the applicant's right to appeal. The board of supervisors shall forward all approved applications and any necessary information regarding the applications to the appropriate local assessor by March 1 of the assessment year in which the application was submitted.

Approval of an application involving a targeted service area that is under appeal pursuant to rule 129—21.7(8B,427) shall be contingent on the outcome of the appeal. In the event that an application is approved and the targeted service area designation subsequently is revoked upon appeal, the approved exemption shall also be revoked at that time.

80.31(6) *Revocation of exemption.* The department or board of supervisors may revoke the exemption at any time after the exemption is granted if the department or board of supervisors determines that the property owner no longer provides the broadband service to a targeted service area at the speeds required under Iowa Code section 427.1(40). The property owner has the responsibility to provide the department, the board of supervisors or the office of the chief information officer the information required to substantiate that the broadband infrastructure meets the requirements of the exemption. The department or board of supervisors, as applicable, shall provide notice of revocation to the property owner. An owner may appeal the decision to revoke the exemption within 30 days of the issuance of the notice of revocation.

80.31(7) *Appeals.*

a. Appeal of denial of application for exemption. An applicant for the exemption under this rule whose application is denied may appeal the denial within 30 days of its issuance.

(1) Denial by board of supervisors. An applicant may appeal the denial of its application for exemption by the board of supervisors to the property assessment appeal board within 30 days of the issuance of the denial.

(2) Denial by the department of revenue. An applicant may appeal the denial of its application for exemption by the department of revenue to the director of revenue within 30 days of the issuance of the denial.

b. Appeal of revocation of exemption. An owner whose exemption is revoked may appeal the revocation within 30 days of its issuance.

(1) Revocation by board of supervisors. An owner may appeal the revocation of its exemption by the board of supervisors to the property assessment appeal board within 30 days of the issuance of the revocation.

(2) Revocation by the department of revenue. An owner may appeal the revocation of its exemption by the department of revenue to the director of revenue within 30 days of the issuance of the revocation.

c. Appeal of value of exemption. A property owner who is dissatisfied with the value of the owner's exemption may appeal the value assigned by the local assessor using the protest procedures under Iowa Code section 441.37. A property owner who is dissatisfied with the value of the owner's exemption may appeal the value assigned by the department using the appeal procedures under Iowa Code section 429.2.

This rule is intended to implement Iowa Code section 427.1(40).

[**ARC 2549C**, IAB 5/25/16, effective 6/29/16; **ARC 2786C**, IAB 10/26/16, effective 11/30/16]

701—80.32 to **80.48** Reserved.

701—80.49(441) Commercial and industrial property tax replacement—county replacement claims. For each fiscal year beginning on or after July 1, 2014, the department of revenue shall pay to the county treasurer an amount equal to the amount of the commercial and industrial property tax replacement claims in the county. For fiscal years beginning on or after July 1, 2017, if an amount appropriated for a fiscal year is insufficient to pay all replacement claims, the director of revenue shall prorate the payment of replacement claims to the county treasurers and shall notify the county auditors of the pro rata percentage on or before September 30.

80.49(1) For each taxing district, the commercial and industrial property tax replacement claim amount is determined by multiplying the amounts calculated in 80.49(1)*"a"* and *"b"* and dividing the resultant amount by $1,000.

a. The difference between the assessed valuation of all commercial property and industrial property for the assessment year used to calculate taxes which are due and payable in the applicable fiscal year and the actual value of all commercial property and industrial property that is subject to assessment and taxation for the same assessment year; and

b. The tax levy rate per $1,000 of assessed value of each taxing district for that fiscal year.

80.49(2) Reporting requirements.

a. On or before July 1 of each fiscal year beginning on or after July 1, 2014, the assessor shall report to the county auditor the total actual value of all commercial and industrial property in the county that is subject to assessment and taxation for the assessment year used to calculate the taxes due and payable in that fiscal year.

b. On or before September 1 of each fiscal year beginning on or after July 1, 2014, the county auditor shall, based upon the information in the report required to be provided in paragraph *"a"* of this subrule, prepare and submit a statement to the department of revenue which lists, for each taxing district in the county, the information required in 80.49(1).

c. The department shall pay the replacement amount to the county treasurer in two installments in September and March of each year.

d. The county treasurer shall apportion the replacement claim payments among the eligible taxing districts in the county.

[**ARC 1332C**, IAB 2/19/14, effective 3/26/14]

701—80.50(427,441) Responsibility of local assessors.

80.50(1) The assessor shall determine the taxable status of all property. If an application for exemption is required to be filed, the assessor shall consider the information contained in the application in determining the taxable status of the property. The assessor may also request from any property owner or claimant any additional information necessary to the determination of the taxable status of the property. For property subject to Iowa Code subsection 427.1(14), the assessor shall not base the determination of the taxable status of property solely on the statement of objects or purposes of the organization, institution, or society seeking an exemption. The use of the property rather than the objects or purposes of the organization, institution, or society shall be the controlling factor in determining the taxable status of property. (*Evangelical Lutheran G.S. Society v. Board of Review of Des Moines,* 200 N.W.2d 509; *Northwest Community Hospital v. Board of Review of Des Moines,* 229 N.W.2d 738.)

80.50(2) In determining the taxable status of property, the assessor shall construe the appropriate exemption statute and these rules in a strict manner. If there exists any doubt as to the taxable status of property, the property shall be subject to taxation. The burden shall be upon the claimant to show that the exemption should be granted. (*Evangelical Lutheran G.S. Society v. Board of Review of Des Moines,* 200 N.W.2d 509; *Southside Church of Christ of Des Moines v. Des Moines Board of Review,* 243 N.W.2d 650; *Aerie 1287, Fraternal Order of Eagles v. Holland,* 226 N.W.2d 22.)

80.50(3) If the assessor determines that all or part of a property is subject to taxation, the assessor shall notify the taxpayer by the issuance of an assessment roll as provided in Iowa Code sections 441.26 and 441.27. If the assessor determines that property has been erroneously exempted from taxation, the assessor shall revoke the exemption for the current assessment year but not for prior assessment years.

80.50(4) The assessor's determination of the taxable status of property may be appealed to the local board of review pursuant to Iowa Code section 441.37.

This rule is intended to implement Iowa Code chapter 427 and sections 441.17(11), 441.26, and 441.27.

[**ARC 7726B**, IAB 4/22/09, effective 5/27/09]

701—80.51(441) Responsibility of local boards of review.

80.51(1) If the board of review determines that property has been erroneously exempted from taxation, the board of review shall revoke the exemption for the current assessment year, but not for prior assessment years, and shall give notice to the taxpayer as provided in Iowa Code section 441.36.

80.51(2) If the board of review acts in response to a protest arising from an assessor's determination of the taxable status of property, the board of review shall notify the taxpayer of its disposition of the protest in accordance with the provisions of Iowa Code section 441.37.

This rule is intended to implement Iowa Code sections 441.35, 441.36, and 441.37.

[**ARC 7726B**, IAB 4/22/09, effective 5/27/09]

701—80.52(427) Responsibility of director of revenue. The director may revoke or modify an exemption on property if the exemption is found to have been erroneously granted by the local taxing officials. Any taxpayer or taxing district may request that the director revoke or modify an exemption, or the director may on the director's own determination revoke or modify an exemption. The director may revoke or modify an exemption for the tax year commencing in the tax year in which the request is made to the director or for the tax year commencing in the tax year in which the director's own motion is filed. The director shall hold a hearing on the appropriateness of the exemption prior to issuing an order for revocation or modification. The director's order to revoke or modify an exemption may be appealed in accordance with Iowa Code chapter 17A or in the district court of the county in which the property is located.

This rule is intended to implement Iowa Code section 427.1(16).

[**ARC 7726B**, IAB 4/22/09, effective 5/27/09]

701—80.53(427) Application for exemption.

80.53(1) Each society or organization seeking an exemption under Iowa Code subsection 427.1(5), 427.1(8), 427.1(21), or 427.1(33) shall file with the appropriate assessor a statement containing the following information:

a. The legal description of the property for which an exemption is requested.

b. The use of all portions of the property, including the percentage of space not used for the appropriate objects of the society or organization and the percentage of time such space is so utilized.

c. A financial statement showing the income derived and the expenses incurred in the operation of the property.

d. The name of the organization seeking the exemption.

e. If the exemption is sought under Iowa Code subsection 427.1(8), the appropriate objects of the society or organization.

f. The book and page number on which is recorded the contract of purchase or the deed to the property and any lease by which the property is held.

g. An oath that no persistent violations of the laws of the state of Iowa will be permitted or have been permitted on such property.

h. The signature of the president or other responsible official of the society or organization showing that information contained in the claim has been verified under oath as correct.

80.53(2) The statement of objects and uses required by Iowa Code subsection 427.1(14) shall be filed only on forms prescribed by the director of revenue and made available by assessors.

80.53(3) Applications for exemptions required under Iowa Code subsection 427.1(14) must be filed with the assessor not later than February 1 of the year for which the exemption is requested.

80.53(4) If a properly completed application is not filed by February 1 of the assessment year for which the exemption would apply, no exemption shall be allowed against the property for that year (1964 O.A.G. 437).

This rule is intended to implement Iowa Code section 427.1, subsections 5, 8, 14, 19 to 24, 27, and 29 to 33.

[**ARC 7726B**, IAB 4/22/09, effective 5/27/09]

701—80.54(427) Partial exemptions. In the event a portion of property is determined to be subject to taxation and a portion of the property exempt from taxation, the taxable value of the property shall be an amount which bears the same relationship to the total value of the entire property as the area of the portion subject to taxation bears to the area of the entire property. If a portion of a structure is subject to taxation, a proportionate amount of the value assigned to the land upon which the structure is located shall also be subject to taxation.

This rule is intended to implement Iowa Code subsection 427.1(14).

[**ARC 7726B**, IAB 4/22/09, effective 5/27/09]

701—80.55(427,441) Taxable status of property.

80.55(1) The status of property on July 1 of the fiscal year which commences during the assessment year determines eligibility of the property for exemption in situations where no claim is required to be filed to procure a tax exemption. If the property is in a taxable status on July 1, no exemption is allowable for that fiscal year. If the property is in an exempt status on July 1, no taxes are to be levied against the property during that fiscal year. Exceptions to this rule are as follows:

a. Land acquired by the state of Iowa or a political subdivision thereof after July 1 in connection with the establishment, improvement, or maintenance of a public road shall be taxable for that portion of the fiscal year in which the property was privately owned.

b. All current and delinquent tax liabilities are to be canceled and no future taxes levied against property acquired by the United States or its instrumentalities, regardless of the date of acquisition, unless the United States Congress has authorized the taxation of specific federally owned property (1980 O.A.G. 80-1-19). The following exceptions apply:

(1) Property owned by the Federal Housing Authority (FHA) and property owned by the Federal Land Bank Association are subject to taxation, and any tax liabilities existing at the time of the acquisition are not to be canceled (1982 O.A.G. 82-1-16; 12 USCS §2055).

(2) Existing tax liabilities against property acquired by the Small Business Administration are not to be canceled if the acquisition takes place after the date of levy. However, no taxes are to be levied if the acquisition takes place prior to the levy date or for subsequent fiscal years in which the Small Business Administration owns the property on July 1 (15 USCS §646).

c. Land owned by the state and leased by the department of corrections or the department of human services pursuant to Iowa Code section 904.302, 904.705, or 904.706 to an entity that is not exempt from property tax is subject to taxation for the term of the lease. This provision applies to leases entered into on or after July 1, 2003. The lessor shall file a copy of the lease with the county assessor of the county where the land is located.

80.55(2) The status of property during the fiscal year for which an exemption was claimed determines eligibility of the property for exemption in situations where a claim is required to be filed to procure a tax exemption. If the property is used for an appropriate purpose for which an exemption is allowable for all of the fiscal year for which the exemption is claimed, no taxes are to be levied

against the property during that fiscal year. If the property for which an exemption has been claimed and received is used for an appropriate purpose for which an exemption is allowable for only a portion of the fiscal year for which the exemption is claimed, the taxes shall be prorated in accordance with the period of time the property was in a taxable status during the fiscal year.

This rule is intended to implement Iowa Code sections 427.1(1), 427.1(2), 427.2, 427.18, and 427.19.
[**ARC 7726B**, IAB 4/22/09, effective 5/27/09]

701—80.56(427) Abatement of taxes. The board of supervisors may abate the taxes levied against property acquired by gift or purchase if the property was acquired after the deadline for filing a claim for property tax exemption if the property would have been exempt under Iowa Code section 427.1, subsection 7, 8, or 9, if a timely claim had been filed.

This rule is intended to implement Iowa Code section 427.3.
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